AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

1-15-87
Vol. 52 No. 10
Pages 1619-1896

# Federal Register

Thursday
January 15, 1987

**Briefings on How To Use the Federal Register—**
For information on briefings in Washington, DC, Portland, OR, Los Angeles, CA, and San Diego, CA, see announcement on the inside cover of this issue.

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 51 FR 12345.

## THE FEDERAL REGISTER
## WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** January 29; at 9 am.

**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

**RESERVATIONS:** Mildred Isler 202–523–3517

### PORTLAND, OR

**WHEN:** February 17; at 9 am.

**WHERE:** Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.

**RESERVATIONS:** Call the Portland Federal Information Center on the following local numbers:

| | |
|---|---|
| Portland | 503–221–2222 |
| Seattle | 206–442–0570 |
| Tacoma | 206–383–5230 |

### LOS ANGELES, CA

**WHEN:** February 18; at 1:30 pm.

**WHERE:** Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.

**RESERVATIONS:** Call the Los Angeles Federal Information Center, 213–894–3800

### SAN DIEGO, CA

**WHEN:** February 20; at 9 am.

**WHERE:** Room 2S31, Federal Building, 880 Front Street, San Diego, CA.

**RESERVATIONS:** Call the San Diego Federal Information Center, 619–293–6030

# Contents

Federal Register
Vol. 52, No. 10
Thursday, January 15, 1987

**Agriculture Department**
*See also* Animal and Plant Health Inspection Service; Farmers Home Administration; Forest Service; National Agricultural Statistics Service
RULES
Agricultural commodities; financing of sale and exportation; correction, 1623

**Animal and Plant Health Inspection Service**
RULES
Interstate transportation of animals and animal products (quarantine):
Brucellosis—
State and area classifications, 1623

**Antitrust Division**
NOTICES
National cooperative research notifications:
NAHB Research Foundation, Inc., 1673

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and Humanities

**Census Bureau**
NOTICES
Surveys, determinations, etc.:
Manufacturers' shipments, inventories, and orders; unfilled orders benchmark survey, 1646

**Coast Guard**
PROPOSED RULES
Drawbridge operations:
Florida, 1636
Vessel traffic management:
Berwick Bay vessel traffic service, Morgan City, LA Correction, 1691

**Commerce Department**
*See* Census Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

**Defense Department**
NOTICES
Meetings:
DOD-University Forum, 1661
Electron Devices Advisory Group, 1660 (3 documents)
Women in Services Advisory Committee, 1661

**Drug Enforcement Administration**
NOTICES
*Applications, hearings, determinations, etc.:*
Dixon, John R., M.D., 1673
England Pharmacy, 1674
Rehm, Kenneth B., D.P.M., 1674

**Education Department**
NOTICES
Grants; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Research and demonstration projects in research training, 1661
Research Fellowships, 1661

**Employment and Training Administration**
NOTICES
Adjustment assistance:
Badlands Shot Hole Service et al., 1676
Pioneer Production Corp., 1677

**Energy Department**
*See also* Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements:
International Atomic Energy Agency, 1661

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 1627
Tennessee, 1628

**Executive Office of the President**
*See* Presidential Documents; Trade Representative, Office of United States

**Farmers Home Administration**
PROPOSED RULES
Program regulations:
General revision of farmer programs, 1706

**Federal Aviation Administration**
RULES
Airworthiness standards:
Commuter category airplanes, 1806
Transition areas, 1625
PROPOSED RULES
Airworthiness standards:
Helicopter minimum flightcrew; withdrawn, 1635

**Federal Communications Commission**
RULES
Common carrier services:
Telegraph reports (Forms 903 and 905); elimination, 1629
Radio and television broadcasting:
Ownership interests in broadcast, cable television and newspaper entities; attribution, 1630
Radio stations; table of assignments:
Texas, 1630

**Federal Energy Regulatory Commission**
NOTICES
Hydroelectric applications, 1662

**Federal Maritime Commission**
RULES
Marine terminal operators, freight forwarders:
Terminal tariffs; terminal operator negligence, exculpatory provisions, etc.
Correction, 1629

**Federal Mine Safety and Health Review Commission**
NOTICES
Meetings; Sunshine Act, 1690

**Fish and Wildlife Service**
PROPOSED RULES
Migratory bird hunting:
Waterfowl hunting—
Nontoxic shot zones, 1636

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Salinomycin, 1626
Tylosin and sulfamethazine, 1626
NOTICES
Animal drugs, feeds, and related products:
Bio-Gro Premix (salinomycin); approval withdrawn, 1662
Human drugs:
Dipyridamole; drug efficacy study implementation; revocation of exemption, 1663

**Forest Service**
NOTICES
Environmental statements; availability, etc.:
Tongass National Forest, AK, 1645

**Health and Human Services Department**
*See* Food and Drug Administration; Health Resources and Services Administration

**Health Resources and Services Administration**
NOTICES
Advisory committees, annual reports; availability, 1668

**Housing and Urban Development Department**
RULES
Lead-based paint hazard elimination in FHA single and multifamily housing programs and in section 8 housing assistance payments programs, 1876

**Immigration and Naturalization Service**
PROPOSED RULES
Aliens:
Landing of alien crewmen, 1634
NOTICES
Immigration Reform and Control Act of 1986:
Preliminary advice pending implementation, 1675

**Interior Department**
*See* Fish and Wildlife Service; Land Management Bureau; Minerals Management Service

**Internal Revenue Service**
RULES
Income taxes:
Withholding upon dispositions of U.S. real property interests by—
Publicly traded partnerships, trusts, and real estate investment trusts; correction, 1691

**International Trade Administration**
NOTICES
Countervailing duties:
Oil country tubular goods from—
Israel, 1649
Export trade certificates of review, 1646
*Applications, hearings, determinations, etc.:*
Illinois Environmental Protection Agency, 1649
University of California et al., 1648
University of South Carolina, 1649

**Interstate Commerce Commission**
NOTICES
Railroad operation, acquisition, construction, etc.:
New Orleans Terminal Co. et al., 1672
R. J. Corman Railroad Corp. et al., 1672

**Justice Department**
*See also* Antitrust Division; Drug Enforcement Administration; Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
SENCO Products, Inc., 1672

**Labor Department**
*See* Employment and Training Administration

**Land Management Bureau**
PROPOSED RULES
Coal management:
Coal product valuation, 1840
NOTICES
Airport leases:
Nevada, 1668
Coal leases, exploration licenses, etc.:
Wyoming, 1669
Meetings:
Salt Lake District Advisory Council, 1669
Realty actions; sales, leases, etc.:
Arizona, 1670
Oregon, 1669
Survey plat filings:
Nevada, 1669
Withdrawal and reservation of lands:
Oregon; correction, 1691

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**Minerals Management Service**
PROPOSED RULES
Royalty management:
Coal product valuation, 1840
Oil product valuation, 1858
NOTICES
Federal and Indian onshore oil and gas leases; royalty valuation, 1671
Outer Continental Shelf; development operations coordination:
Tenneco Oil Exploration & Production, 1670

**National Agricultural Statistics Service**
NOTICES
Prices received by farmers data series; rice and cotton, 1645

**National Foundation on the Arts and Humanities**
NOTICES
Agency information collection activities under OMB review, 1677

Meetings:
Arts National Council, 1678

**National Labor Relations Board**
NOTICES
Meetings; Sunshine Act, 1690

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Tanner crab off Alaska, 1632
NOTICES
Grants; availability, etc.:
Fishing industry research and development projects-Saltonstall-Kennedy funds, 1655

**Nuclear Regulatory Commission**
PROPOSED RULES
Radioactive wastes, low-level; emergency access to disposal facilities, 1634
NOTICES
Environmental statements; availability, etc.:
Consumers Power Co., 1678
Regulatory guides:
Issuance, availability, and withdrawal, 1679

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Pension Benefit Guaranty Corporation**
RULES
Multiemployer plans:
Valuation of plan benefits and plan assets following mass withdrawal
Interest rates, 1626

**Personnel Management Office**
RULES
Retirement:
Computation of annuities for part-time service, 1621
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 1679

**Presidential Documents**
ADMINISTRATIVE ORDERS
Brazil; imports of U.S. computer software products (Memorandum of December 30, 1986), 1619

**Public Health Service**
*See* Food and Drug Administration; Health Resources and Services Administration

**Securities and Exchange Commission**
NOTICES
Agency information collection activities under OMB review, 1686
Meetings; Sunshine Act, 1690
Self-regulatory organizations:
Joint industry plan; reporting plan for over-the-counter securities traded on unlisted trading privilege basis, 1684
Self-regulatory organizations; proposed rule changes:
Pacific Stock Exchange, Inc., 1686
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 1683
Midwest Stock Exchange, Inc., 1687
Philadelphia Stock Exchange, Inc., 1683
*Applications, hearings, determinations, etc.:*
Affiliated Publications, Inc., 1680
Ausimont Compo N.V., 1680
Variable Annuity Life Insurance Co. et al., 1681

**Small Business Administration**
NOTICES
Disaster loan areas:
Missouri, 1687
License surrenders:
Pasadena Capital Corp., 1688
Texas State Capital Corp., 1688
*Applications, hearings, determinations, etc.:*
Neptune Capital Corp., 1688

**Statistical Reporting Service**
*See* National Agricultural Statistics Service

**Trade Representative, Office of United States**
NOTICES
Generalized System of Preferences:
Articles eligible for duty-free treatment, etc., 1680
General review; competitive need waiver requests, 1680

**Transportation Department**
*See* Coast Guard; Federal Aviation Administration

**Treasury Department**
*See* Internal Revenue Service

**United States Information Agency**
NOTICES
Agency information collection activities under OMB review, 1688
Organization, functions, and authority delegations:
National Endowment for Democracy; Freedom of Information procedures address change, 1689

---

**Separate Parts In This Issue**

**Part II**
Department of Agriculture, Farmers Home Administration, 1706

**Part III**
Department of Transportation, Federal Aviation Administration, 1806

**Part IV**
Department of the Interior, Minerals Management Service and Bureau of Land Management, 1840

**Part V**
Department of the Interior, Minerals Management Service, 1858

**Part VI**
Housing and Urban Development Department, 1876

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**3 CFR**

**Administrative Orders:**

Memorandums:

October 6, 1986 (See Memorandum of December 30, 1986)..... 1619

**5 CFR**

831..... 1621

**7 CFR**

17..... 1623

**Proposed Rules:**

1809..... 1706
1900..... 1706
1902..... 1706
1910..... 1706
1924..... 1706
1941..... 1706
1943..... 1706
1945..... 1706
1951..... 1706
1955..... 1706
1962..... 1706
1965..... 1706
1980..... 1706

**8 CFR**

**Proposed Rules:**

252..... 1634

**9 CFR**

78..... 1623

**10 CFR**

**Proposed Rules:**

62..... 1634

**14 CFR**

21..... 1806
23..... 1806
36..... 1806
71..... 1625
91..... 1806
135..... 1806

**Proposed Rules:**

1..... 1635
27..... 1635
29..... 1635

**21 CFR**

558 (2 documents)..... 1626

**24 CFR**

35..... 1876
200..... 1876
881..... 1876
882..... 1876
886..... 1876

**26 CFR**

1..... 1691
602..... 1691

**29 CFR**

2676..... 1626

**30 CFR**

**Proposed Rules:**

202 (2 documents)..... 1840, 1858
203 (2 documents)..... 1840, 1858
206 (2 documents)..... 1840, 1858
207..... 1858
210..... 1858
212..... 1840
218..... 1840
241..... 1858

**33 CFR**

161..... 1691

**Proposed Rules:**

117..... 1636

**40 CFR**

52 (2 documents)..... 1627, 1628

**43 CFR**

**Proposed Rules:**

3480..... 1840

**46 CFR**

515..... 1629

**47 CFR**

1..... 1630
43..... 1629
73 (2 documents)..... 1630
76..... 1630

**50 CFR**

671..... 1632

**Proposed Rules:**

20..... 1636

Federal Register
Vol. 52, No. 10
Thursday, January 15, 1987

# Presidential Documents

Title 3—

The President

**Memorandum of December 30, 1986**

## Determination Under Section 301 of the Trade Act of 1974

**Memorandum for the United States Trade Representative**

On October 6, 1986, under Section 301 of the Trade Act of 1974 (19 U.S.C. 2411), I determined that acts, policies, and practices of the Government of Brazil with respect to informatics (computer and computer-related) products are unreasonable and burden or restrict United States commerce (51 FR 35,993). I directed you as the United States Trade Representative to press forward with negotiations with the Government of Brazil to address our concerns regarding Brazilian restrictions on U.S. trade and investment in the informatics sector and the lack of adequate and effective protection for intellectual property, including computer software. I stated at that time that I would review the progress in the negotiations no later than December 31, 1986. Based on that review, I have determined to: (1) suspend that part of the investigation dealing with Brazilian administrative procedures; and (2) direct you as the U.S. Trade Representative to conduct further negotiations with Brazil toward achieving adequate and effective protection for intellectual property rights, particularly for computer software, and the elimination of barriers to U.S. investment in the Brazilian informatics sector.

*Reasons for Determination*

Since my determination of October 6, 1986, the Government of Brazil has undertaken administrative reforms that, if fully implemented, should reduce the adverse effect on United States commerce of the Brazilian informatics policy. The Government of Brazil has established an *ad hoc* group to review specific company complaints regarding the application of the informatics law to U.S. trade and investment. It recently announced certain other administrative reforms designed to speed and simplify the process of obtaining necessary licenses and to create an appeals process. Finally, it has defined and narrowed the scope of its import restrictions, subject to periodic revision. These developments signal sufficient progress to warrant suspending, but not terminating, that part of the investigation initiated under Section 302 of the Trade Act on September 16, 1985 (50 FR 37,608). If these improvements are properly implemented and have the expected effect of reducing the burdens or restrictions on U.S. commerce, then that part of the Section 301 investigation can be terminated.

To date, however, we have made insufficient progress in our negotiations with Brazil in two key areas: the currently ineffective and inadequate protection of intellectual property rights, especially computer software; and the restrictions on U.S. investment in the informatics sector. Nevertheless, in view of the reforms already made and the possibility of additional progress, I have determined that a final effort to negotiate a settlement of the software and investment issues is appropriate. Although I am fully prepared to act unilaterally to defend U.S. interests in the face of unfair foreign trade barriers, I believe that the preferable solution is to open foreign markets, not to close our own. Accordingly, I have directed the U.S. Trade Representative to make a final effort to negotiate an acceptable resolution of the software and investment issues. If no acceptable resolution is forthcoming in six months, I will determine the appropriate response of the United States.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
*Washington, December 30, 1986.*

[FR Doc. 87-1062
Filed 1-14-87; 10:27 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 52, No. 10
Thursday, January 15, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 831

### Retirement; Computation of Annuities for Part-Time Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with comments requested.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing regulations to implement the Consolidated Omnibus Budget Reconciliation Act of 1985 that amended the retirement provisions of chapter 83 of title 5, United States Code. The Act eliminates a feature of the law that permitted potential abuse of the Civil Service Retirement System (CSRS) by part-time employees who change to full-time service at the end of their career. These regulations require retirement benefits to be prorated for employees whose service includes part-time service performed on or after April 7, 1986.

**DATES:** Interim rules effective April 7, 1986. Comments must be received on or before March 16, 1987.

**ADDRESS:** Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John A. Elliott, (202) 632–4634.

**SUPPLEMENTARY INFORMATION:** The Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, enacted April 7, 1986, amended the civil service retirement law (Subchapter III of Chapter 83 of title 5, United States Code), to establish a new method of computing annuity for part-time employees. The amendment and these implementing regulations do not apply to the new Federal Employees' Retirement System Act (Pub. L. 99–335, enacted June 6, 1986).

The amendment, a new subsection (o) of section 8339 of title 5, United States Code, is intended to close a loophole that allowed a part-time employee to change to full-time service during the last 3 years of service (usually the high-3 average salary period for annuity computation purposes) and earn the same annuity as an otherwise similarly situated employee who had worked an entire career on a full-time basis.

#### The Potential for Abuse Under Prior Law

Under the retirement law in effect prior to April 7, 1986, all of a part-time employee's service was credited in the computation of annuity the same as for full-time service, that is, full calendar time from the date of appointment to the date of separation. The part-time employee's average pay (that is, the high-3) was then computed on the basis of part-time basic pay rates. For example, an individual who worked 30 years on a half-time basis received 30 years of service credit in the annuity computation (which equates to 56.25% of the average salary) but he or she had an average pay exactly half as large as the average pay of a full-time employee with the same pay grade and step history. Thus, the annuity benefit of the half-time employee was one-half of the annuity payable to the career full-time employee with the same 30 years of service and same pay grade and step history.

This method of computing annuity was subject to possible abuse. A longtime part-timer who changed to full-time service for just the last 3 years of service could obtain the same annuity benefit he or she would have earned as a full-time employee because in both cases the service credit and average pay were identical. This provided an unearned benefit to the employee whose service was largely part time. In addition, this was inequitable to full-time employees whose salary deductions for retirement were based on the full-time pay, but who received the same annuity benefit as the part-time employee who in late career changed to full time.

#### The Remedy for This Abuse

Pub. L. 99–272 corrects this potential for abuse by providing that the average salary for both part-time and full-time employees will be computed on the basis of full-time salary, but the benefit so computed will be prorated, that is, reduced by a fraction that reflects part-time service. The new provision applies only to employees whose service includes part-time service performed on or after April 7, 1986 (the date of the law). The following example illustrates how the new methodology would be applied to a part-time employee with 30 years service, who retires on April 6, 1987. His entire service was performed on a 30-hour per week schedule. The base annuity will be computed based on 30 years of service and a full-time average pay, but the annuity will then be multiplied by .75 (reflecting the ¾-time schedule), resulting in an effective reduction of 25 percent. This method of computation eliminates the potential abuse created when a part-time employee changes to full-time service during the average pay period.

#### Definitions

For the purposes of this computation, § 831.703(b) of these interim regulations establish the following definitions:

- *Full-time service* means any service in which the employee is sheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours). This definition is the same as the definition of full-time service in § 831.802 concerning civil service annuitants.
- *Intermittent service* means any actual service performed with no prescheduled regular tour of duty. By specific provision of 5 U.S.C. 8339(o)(2), intermittent service is not considered part-time service for the purposes of computation of annuity. Intermittent service of an employee is generally creditable under the retirement law but only for the time actually employed.
- *Part-time service* means any actual service performed on a less than full-time basis, by an individual whose appointment describes a regularly scheduled tour of duty, and any period of time credited during nonpay status under CSRS, which follows a period of part-time service without any intervening period of actual service

other than part-time service. This definition is also the same as the definition of part-time service in § 831.802, except that it covers periods of nonpay status that are creditable toward the annuity computation and that follow a period of actual part-time service. (Under SCRS, an employee is generally eligible for up to 6 months of credit for periods of nonpay status each year.) This expanded definition is needed to prevent a part-time employee who is credited with leave without pay time from avoiding the proration of annuity during periods in which no service is rendered. Periods of creditable nonpay status time that are not considered to be part-time service for this purpose are considered to be full-time service. Note that this definition is not limited to part-time career employment because it includes part-time temporary employment as well.

• *Temporary service* means service under an appointment limited to 1 year or less.

• *Proration factor* means the percentage, rounded to the nearest percent, used in the computation explained below to make the appropriate reduction in the annuity of employees whose service includes part-time service on or after April 7, 1986. It is generally the number of hours a part-time employee works divided by the number of hours the employee would have worked if he or she were a full-time employee over the same period of time. For a half-time employee, it is 20/40, or .50. If an employee also performs service that is not affected by the new methodology (fulltime, intermittent, or temporary service performed on a full-time basis) as well as part-time service, the number of hours of such service must be included in both the numerator and the denominator of the fraction. This decreases the reduction effect of the proration factor. The additional credit for unused sick leave under 5 U.S.C. 8339(m) is not included in the fraction.

**Application of New Methodology**

In the average pay computation, the rates of basic pay for employees whose service includes part-time service on or after April 7, 1986, are deemed to be the rates that would have been in effect if the part-time service had been performed on a full-time basis. The average pay (high-3) covers any 3 consecutive years of creditable service. The average pay is multiplied by the percentage for length of service, including unused sick leave credit. This amount is then multiplied by the proration factor.

**Examples of Computation of Basic Annuity**

For example, consider a part-time employee with 30 years of service, all of it on a 30-hour per week schedule, ending April 6, 1988. For the simplicity of illustration, he has no change in his rate of basic pay over the last 3 years of service—$15,000. The deemed full-time rate is $20,000. He has the equivalent of one-half year of unused sick leave. The computation of the basic yearly annuity is as follows:

$20,000 (average pay) *times* 57.25 percent (30 years service [56.25%] plus ½ year of sick leave [1%], *equals* $11,450, *times* .75 (proration factor at ¾ time), *equals* a basic annuity of $8587.50.

As another example, consider a part-time employee with 30 years of service who retires on February 28, 1987, but who has 10 years (520 weeks) of full-time (40 hours per week) service to her credit from 1957 to 1967. During her remaining 20 years of service, all part time, she worked 5 years (260 weeks) on a 24-hour per week schedule, and 15 years (780 weeks) on a 32-hour per week schedule. Adding this all up, she worked a total of 52,000 hours during her 30-year career. Again for the sake of simplicity, she has no change in her rate of basic pay over the last 3 years of service—$24,000. The deemed full-time rate is $30,000. She has the equivalent of one-half year of unused sick leave. The computation of the basic yearly annuity is as follows:

$30,000 (average pay) *times* 57.25 percent *equals* $17,175, *times* .83 (proration factor based on 52,000 hours actually worked, divided by 62,407, the number of hours in a full-time schedule over 30 years, [taking into account the change from a 2080 hour to a 2087 hour annual multiplier since March 1986]), *equals* a basic annuity of $14,255.25.

**Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date**

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. The regulations are effective retroactive to April 7, 1986, the effective date of the amendments of section 15204 of Pub. L. 99–272.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and will affect only Federal employees, retirees, and agencies.

**List of Subjects in 5 CFR Part 831**

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirements.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is amending Part 831 of Title 5 of the Code of Federal Regulations as follows:

## PART 831—RETIREMENT

1. The authority citation for Subpart G of Part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347.

2. Subpart G to Part 831 is amended to add a new § 831.703 to read as follows:

### Subpart G—Computation of Annuities

**§ 831.703 Computation of annuities for part-time service.**

(a) *Purpose.* The computational method in this section shall be used to determine the annuity for an employee whose service includes part-time service on or after April 7, 1986.

(b) *Definition.* In this section—

(1) "Full-time service" means any actual service in which the employee is scheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

(2) "Intermittent service" means any actual service performed with no prescheduled regular tour of duty.

(3) "Part-time service" means any actual service performed on a less than full-time basis, by an individual whose appointment describes a regularly scheduled tour of duty, and any period of time credited as nonpay status time under 5 U.S.C. 8332(f), which follows a period of part-time service without any intervening period of actual service other than part-time service. This definition is not limited to part-time career employment because it includes part-time temporary employment as well.

(4) "Temporary service" means service under an appointment limited to

1 year or less, exclusive of intermittent serivce.

(5) "Average pay" means the largest annual rate resulting from averaging, over any 3 consecutive years of creditable service, the annual rate of basic pay.

(6) "Deemed rate of basic pay" is for employees whose service includes part-time service on or after April 7, 1986. The annual rate of basic pay for these employees is deemed to be the rate that would have been payable if their part-time service had been performed on a full-time basis.

(7) "Proration factor" means a fraction expressed as a percentage rounded to the nearest percent. The numerator is the sum of the number of hours the employee actually worked during part-time service, and the denominator is the sum of the number of hours that a full-time employee would be scheduled to work during the same period of service included in the numerator. If an employee has creditable service in addition to part-time service (full-time service, intermittent service, or temporary service performed on a full-time basis), such service must be included in the numerator and denominator of the fraction. In general, this is done by including the number of days of such intermittent service, multiplied by 8, and the number of weeks of such temporary service or full-time service, multiplied by 40 in both the numerator and the denominator. The additional credit for unused sick leave under 5 U.S.C. 8339(m) is not included in the fraction.'

(c) *Basic annuity.* The basic annuity for employees whose service includes part-time service on or after April 7, 1986, is computed in accordance with 5 U.S.C. 8339, using the average pay based on the annual rate of basic pay payable for full-time service. This amount is then multiplied by the proration factor. The result is the yearly rate of annuity (on which the monthly rate is based) before reductions for retirement before age 55; pre-October 1, 1982, nondeduction service and survivor benefits; or the reduction for an alternative annuity under section 204 of Pub. L. 99-335.

(d) *Limitations.* The use of the deemed full-time salary provision for determining average pay is limited to the purposes stated in this section. It may be used as the basis for computing (1) the 80-percent limit on annuity under 5 U.S.C. 8339(f); (2) the minimum annuity amount under 5 U.S.C. 8339 (e) (concerning air traffic controller annuity) or 5 U.S.C. 8339(g) (concerning disability annuity); or (3) a supplemental annuity under 5 U.S.C. 8344(a).

[FR Doc. 87-909 Filed 1-14-87; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 17

### Financing of Commercial Sales of Agricultural Commodities; Pub. L. 480; Title I Regulations; Correction

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** USDA is correcting technical and typographical errors in the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 93rd Cong.), which appeared in the **Federal Register** on December 31, 1986 (51 FR 47408).

**FOR FURTHER INFORMATION CONTACT:** Robert S. Simpson, Director Pub. L. 480 Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone: (202) 447-3664.

**SUPPLEMENTARY INFORMATION:** USDA revised a portion of the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 93rd Cong.) which is set forth in §§ 17.1 through 17.8 and 17.16 of Part 17 of Title 7 of the Code of Federal Regulations. The revision contained technical and typographical errors which are discussed briefly below and which are corrected by this notice.

In § 17.2(b), the definition of "ocean bill of lading" was printed incorrectly, without the word "or" between the first and second sentences of paragraph (2)(ii). This is corrected and, to make the definition clearer, paragraph designations (A) and (B) are added within paragraph (2)(ii). Section 17.7 inadvertently contained two paragraphs designated "(c)". The second paragraph (c) is now designated (d) and paragraph (d) is now designated (e). Finally, in § 17.21, the Zip Code for the Washington, DC ASCS office is corrected to "20013".

The following corrections are made in the Pub. L. 480, Title I Financing Regulations published in **Federal Register** on December 31, 1986 (51 FR 47408).

**§ 17.2 [Corrected]**

1. On page 47410, § 17.2(b), paragraph (2)(ii) of the definition of "ocean bill of lading" is correctly added to read as follows:

"(ii) for the purpose of financing ocean freight or ocean freight differential, (A) an "on-board" bill of lading which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC-106 not later than eight (8) running days after the last LASH or Seabee barge loading date (contract layday) specified in the Form CCC-106, or (B) a bill of lading or a LASH or Seabee barge bill of lading with an "on-board ocean vessel" endorsement which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC-106 not later than eight (8) running days after the last LASH or Seabee barge loading date (contract layday) specified in the Form CCC-106."

**§ 17.7 [Corrected]**

2. On page 47414, § 17.7, paragraph (c) "Selling agents (requirements)" is correctly designated as paragraph (d), and paragraph (d) "Disapproval; approval under certain conditions" is correctly designated as paragraph (e).

**§ 17.21 [Corrected]**

4. On page 47418, § 17.21, change the Zip Code for the Washington, DC ASCS office from "20001" to "20013".

Signed at Washington, DC on January 12, 1987.

**Melvin E. Sims,**

*General Sales Manager, Foreign Agricultural Service.*

[FR Doc. 87-919 Filed 1-14-87; 8:45 am]
BILLING CODE 3410-10-M

### Animal and Plant Health Inspection Service

### 9 CFR Part 78

**[Docket No. 86-123]**

### Brucellosis in Cattle; State and Area Classifications

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This document amends the regulations governing the interstate movement of cattle because of

brucellosis by changing the classification of Arkansas from Class C to Class B. This action is necessary because it has been determined that Arkansas meets the standards for Class B status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from Arkansas.

**DATES:** Effective date: January 15, 1987. We will consider your comments if we receive them on or before March 16, 1987.

**ADDRESSES:** Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86–123. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jan Huber, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5965.

**SUPPLEMENTARY INFORMATION:**

**Background**

The brucellosis regulation (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. The State of Arkansas is designated a Class C status. This document amends the regulations to change the brucellosis program status of Arkansas from Class C to Class B.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis, with Class A and Class B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or areas compared to movements from Free States or areas, and are more stringent for movements from Class B States or areas compared to movements from Class A States or areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or areas.

The basic standards for the different classifications of States or areas concern maintenance of: (1) A cattle herd infection rate, based on the number of herds found to have brucellosis reactors, not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population, based on the percentage of brucellosis reactors found in Market Cattle Identification (testing at stockyards and slaughtering establishments) not to exceed a stated level; (3) a surveillance system which requires testing of dairy herds, participation of all slaughtering establishments in the Market Cattle Identification program, identification and monitoring of herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received; and (4) minimum procedural standards for administering the program.

In order to attain and maintain Class Free status a State or area must (1) Remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer, (2) maintain a 12 consecutive months MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

In order to attain and maintain Class A status a State or area must (1) Not exceed a cattle herd infection rate, due to field strain *Brucella abortus* of 0.25 percent or 2.5 herds per 1,000, based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 10,000 or fewer herds, (2) must maintain a 12 consecutive months MCI reactor prevalence rate not to exceed one reactor per 1,000 cattle tested (0.10 percent), and (3) must have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

In order to attain and maintain Class B status a State or area must (1) Not exceed a cattle herd infection rate due to field strain *Brucella abortus* of 1.5 percent or 15 herds per 1,000, based on the number of reactors found within the State or area during any 12 consecutive months except in States with 1,000 or fewer herds, (2) must maintain a 12 consecutive months MCI reactor prevalence rate not to exceed 3 reactors per 1,000 cattle tested (0.30 percent), and (3) must have an approved individual herd plan in effect within 45 days of notification of infection in the reactor herd.

A State or area with (1) 1,000 or more herds having 12 consecutive months herd infection rate, due to field strain *Brucella abortus* exceeding 1.5 percent or 15 herds or more per 1,000, based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 1,000 or fewer herds, and (2) an MCI reactor prevalence rate during 12 consecutive months exceeding three reactors per 1,000 cattle tested (0.30 percent) is a Class C State or area. States or areas designated as Class C shall have an approved individual herd plan in effect within 45 days of locating the source herd or recipient herd.

Prior to the effective date of this document, Arkansas was classified as a Class C State because of the herd infection rate and the MCI reactor prevalence rate. To attain and maintain Class B status, a State or area must, among other things, maintain an accumulated 12-month herd infection rate for brucellosis not to exceed 15 herds per 1,000 (1.5 percent) if the State has 1,000 or more herds, and an MCI reactor prevalence rate for such 12-month period must not exceed 3 reactors per 1,000 cattle tested (0.30 percent). A review of the brucellosis program establishes that Arkansas should be changed to Class B, since it now meets the criteria for classification as Class B.

**Executive Order 12291 and Regulatory Flexibility Act**

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Arkansas reduces certain testing and other requirements on the interstate movement of these cattle. Testing

requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this document will not affect market patterns and will not have a significant economic impact on these persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

**Emergency Action**

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from Arkansas.

Further, pursuant to administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after the publication of this document in the **Federal Register.** Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

**List of Subjects in 9 CFR Part 78**

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

## PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

**Authority:** 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 78.41 [Amended]**

2. Section 78.41, paragraph (c) is amended by adding "Arkansas" immediately after "Alabama".

3. Section 78.41, paragraph (d) is amended by removing "Arkansas".

Done in Washington, DC, this 12th day of January 1987.

**Billy G. Johnson,**

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87–881 Filed 1–14–87; 8:45 am]

BILLING CODE 3410–34–M

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

## [Airspace Docket No. 86–ANM–2]

## Establishment of Evanston, WY, Transition Area.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action proposes to establish a 700 foot transition area at Evanston, Wyoming, to accommodate a new VOR/DME instrument approach procedure to the Evanston-Uinta County Airport. This action also corrects several typographical errors of longitudinal coordinates which appeared in the Notice of Proposed Rulemaking for the establishment of the 700 foot transition area at Evanston, Wyoming (51 FR 32484).

**EFFECTIVE DATE:** 0901 U.T.C., March 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brown, ANM–534, Federal Aviation Administration, Docket No. 86–ANM–2, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2534.

**SUPPLEMENTARY INFORMATION:**

**History**

On September 12, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700 foot transition area at Evanston, Wyoming (51 FR 32484). This action is necessary to ensure segregation of aircraft using the new VOR/DME instrument approach procedure to the airport and other aircraft operating in visual weather conditions.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700 foot transition area at Evanston, Wyoming, to accommodate new VOR/DME instrument approach procedures to the Evanston-Unita County airport at Evanston, Wyoming.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

## PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

**Evanston, Wyoming, Transition Area (New)**

That airspace extending 700 feet above the surface within an area bounded by a line beginning at lat. 41°20'00"N, long. 111°28'00"W), thence to lat. 41°32'00"N, long. 110°47'00"W, thence to lat. 41°15'00"N, long. 111°37'00"W, thence to lat. 41°01'00"N, long. 111°18'00"W, to beginning.

Issued in Seattle, Washington, on December 30, 1986.

**William E. O'Neill,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 87-851 Filed 1-14-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Furst-McNess Co. providing for the making of Type A medicated articles containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The Type A medicated articles are for making Type C medicated feeds for use in swine.

**EFFECTIVE DATE:** January 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

**SUPPLEMENTARY INFORMATION:** Furst-McNess Co., Freeport, IL 61032, is the sponsor of NADA 140-820 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of Type A medicated articles containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine to make Type C medicated feeds for use in swine. The resulting Type C medicated feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevention of swine dysentery (vibrionic), and control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and 21 CFR 558.630 is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.630 [Amended]**

2. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by inserting numerically the number "010439."

Dated: January 5, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-855 Filed 1-14-87; 8:45 am]

BILLING CODE 4160-01-M

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Salinomycin

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the regulation that reflected approval of a new animal drug application (NADA) providing for use of Bio-Gro® Premix (salinomycin) to make Type C feeds for feedlot cattle. The feeds are indicated for increased rate of weight gain and/or improved feed efficiency in beef cattle being fed in confinement for slaughter. In a notice published elsewhere in this issue of the **Federal Register**, the agency is withdrawing approval of the subject NADA at the request of the sponsor.

**EFFECTIVE DATE:** January 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Vitolis E. Vengris, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register**, the agency is withdrawing approval of A. H. Robins Co.'s NADA 137-654 which covers use of Bio-Gro® Premix (salinomycin). This document removes and reserves 21 CFR 558.550(b)(2) that reflected approval of the NADA.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.550 [Amended]**

2. Section 559.550 *Salinomycin* is amended by removing paragraph (b)(2) and reserving it for future use.

Dated: January 8, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-854 Filed 1-14-87; 8:45 am]

BILLING CODE 4160-01-M

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 2676

### Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219 (c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of February 1987.

**EFFECTIVE DATE:** February 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8850, (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

## PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

**Authority:** Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93–406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96–364, 94 Stat. 1302, 1237–1238, and 1261 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

**§ 2676.15 Interest**

* * * * *

(c) *Interest rates.*

| For valuation dates occurring in the month:— | The values of $i_t$ are:— | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_n$ |
| * | | | | | | | | | | | | | | | | |
| February 1987 | .08875 | .08625 | .08375 | .08 | .07625 | .07125 | .07125 | .07125 | .07125 | .07125 | .065 | .065 | .065 | .065 | .065 | .05875 |

Kathleen P. Utgoff,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87–858 Filed 1–14–87; 8:45 am]

BILLING CODE 7708–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[A–9–FRL–3122–6]**

## Approval and Promulgation of Implementation Plans; California; Ventura County and South Coast

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this notice, EPA is taking final action to approve revisions to the rules of the South Coast Air Quality Management District (SCAQMD) and the Ventura County Air Pollution Control District (VCAPCD) under section 110 and/or Part D of the Clean Air Act. These revisions were submitted by the California Air Resources Board (ARB) as revisions to the California State Implementation Plan (SIP). The effect of this action is to incorporate the revised rules into the federally approved SIP. The revised rules strengthen the SIP.

**EFFECTIVE DATE:** February 17, 1987.

**ADDRESSES:** Copies of the revisions are available for public inspection during normal business hours at:

EPA, Region 9, Air Management Division, State Implementation Plan Section, 215 Fremont Street, First Floor, San Francisco, CA 94105

EPA Library, Public Information Reference Unit, EPA, 401 M Street, SW., Washington, DC 20460

Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009

**FOR FURTHER INFORMATION CONTACT:** James C. Breitlow, Chief, State Implementation Plan Section (A–2–3) at the EPA, Region 9 address listed above, Telephone: (415) 974–7641; (FTS) 454–7641.

**SUPPLEMENTARY INFORMATION:**

**Background**

The following rules were submitted by the ARB for incorporation into the SIP on the dates indicated (the affected pollutants are in parentheses):

*South Coast Air Quality Management District*

*December 2, 1983*

Rule 466—Pumps and Compressors (VOC)

*March 14, 1984*

Rule 1158—Storage, Handling & Transport of Petroleum Coke (TSP)

*October 19, 1984*

Rule 463—Storage of Organic Liquids (VOC)

Rule 1141.2—Surfactant Manufacturing (VOC)

*Ventura County APCD*

*August 1, 1984*

Rule 74.7—Fugitive Emissions of ROC at Petroleum Refineries and Chemical Plants (VOC)

On November 27, 1985 (50 FR 48798) EPA proposed to approve the revised rules. No public comments were received concerning EPA's proposed inclusion of the rules in the SIP. EPA is approving the rules because they are consistent with the Clean Air Act, 40 CFR Part 51 and EPA policy.

**EPA Action**

This notice takes final action to approve the rule revisions listed above and incorporate them into the California SIP. EPA is approving the VOC rules under section 110 and Part D of the Clean Air Act, and TSP rule under section 110 only. EPA is not approving the TSP rule under Part D at this time because EPA has not made a determination as to whether or not the rule constitutes RACT for fugitive sources.

Approval of South Coast Rule 466 and Ventura Rule 74.7 under Part D of the Clean Air Act removes two 1979 California SIP conditions of approval. The conditions required that previously submitted versions of the two rules either be amended or justified as meeting EPA requirements.

**Regulatory Process**

Under 5 U.S.C. 605 (b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Particulate matter, Intergovernmental relations, and Incorporation by reference.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 31, 1986.

**Lee M. Thomas,**

*Administrator.*

## PART 52—[AMENDED]

### Subpart F—California

40 CFR Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by adding paragraphs (c)(153)(vii)(B), (c)(156)(vii), (c)(166) and (c)(167) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(153) * * *

(vii) South Coast AQMD.

* * * * *

(B) New rule 1158, adopted 12–2–83.

* * * * *

(156) * * *

(vii) South Coast AQMD.

(A) New or amended rules 463, adopted 6–1–84 and 1141.2, adopted 7–6–84.

* * * * *

(166) A revised regulation for the following district was submitted on December 2, 1983, by the Governor's designee.

(i) Incorporation by Reference.

(A) South Coast AQMD.

(1) Amended rule 466 adopted 10–7–83.

* * * * *

(167) A revised regulation for the following district was submitted on August 1, 1984, by the Governor's designee.

(i) Incorporation by Reference.

(A) Ventura County APCD.

(1) Amended rule 74.7 adopted 7–3–84.

* * * * *

**§ 52.232 [Amended]**

3. Section 52.232 is amended by removing paragraphs (a)(3)(ii) through (a)(3)(v) and (a)(11)(ii).

[FR Doc. 87–916 Filed 1–14–85; 8:45 am]

BILLING CODE 6560–50–M

**40 CFR Part 52**

**[A–4–FRL–3142–4; TN–030]**

## Approval and Promulgation of Implementation Plans; Tennessee; Visible Emission Evaluation Method 4

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On May 28, 1986, the State of Tennessee submitted Tennessee Visible Emission Evaluation Method 4 (TVEE–4) for EPA review. TVEE–4 was adopted by the Tennessee Air Pollution Control Board and became State-adopted on April 16, 1986. Today, EPA is approving TVEE–4 because of its consistency with EPA policy and requirements. The intended effect of TVEE–4 is to provide for the visual determination of fugitive dust emissions, i.e., emissions not emitted from a stack.

**EFFECTIVE DATE:** This action will be effective on March 16, 1987, unless notice is received within 30 days of publication that someone wishes to submit adverse of critical comments.

**ADDRESSES:** Written comments should be addressed to Rosalyn Hughes of the EPA Region IV Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Public Information Reference Unit, Library Systems Branch, Environmental Protection Ageny, 401 M Street, SW., Washington, DC 20460

Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

Division of Air Pollution Control, Tennessee Department of Health and Environment, 4th Floor Customs House, 701 Broadway, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address, telephone 404/347–3286 or FTS 257–3286.

**SUPPLEMENTARY INFORMATION:** Visual determination of emissions from an air pollution source is one way of determining whether or not the source is in compliance with the particulate emission limits to which it is subject. Written procedures for evaluating visible emissions are useful in assuring the emission limits are enforced fairly

and uniformly. EPA previously approved Tennessee Visible Emission Evaluation (TVEE) Methods 1 and 2 (50 FR 15892, April 23, 1985) and Method 3 (51 FR 9445, March 19, 1986). The State has adopted a fourth method for use in evaluating fugitive dust emissions from non-stack emission points (other than roads) crossing the property line. The emission limit is the visual determination of emissions by an observer without the aid of instruments.

TVEE–4 is comprised of seven sections:

1. Introduction
2. Applicability and Principle
3. Definitions
4. Equipment
5. Procedure
6. Emission Time
7. Rules of Certification

"Emission time", "fugitive dust emissions", "observation period" and "stack" are defined in the Definitions section. A stopwatch is needed to monitor the observation period. The Procedure section specifies the property line boundaries; the position of the observer; field records; and observations, including the length of the observation period, observer rest breaks, visual interference, and recording observations.

Final Action: Since TVEE–4 is consistent with EPA policy and requirements, it is hereby approved. The public should be advised that this action will be effective March 16, 1987. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I hereby certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Intergovernmental relations, Particulate matter, Incorporation by reference.

Dated: December 23, 1986.

**Lee M. Thomas,**

*Administrator.*

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

## PART 52—[AMENDED]

### Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(73) as follows:

**§ 52.2220 Identification of plan.**

* * * * *

(c) * * *

(73) Tennessee Visible Emissions Evaluation Method 4 was submitted on May 28, 1986, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Tennessee Visible Emissions Evaluation Method 4, which became State-adopted on April 16, 1986.

(ii) Other material—none.

* * * * *

[FR Doc. 87–786 Filed 1–14–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 515

**[Docket No. 86–15]**

### Filing of Tariffs by Marine Terminal Operators, Exculpatory Provisions

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Maritime Commission is correcting errors in the preamble to the final rule prohibiting exculpatory provisions in marine terminal tariffs, published in the **Federal Register** on December 24, 1986 (51 FR 46668).

**SUPPLEMENTARY INFORMATION:** The Federal Maritime Commission promulgated a rule prohibiting exculpatory provision in marine terminal tariffs on December 24, 1986 (51 FR 46668–70). That notice contained errors in the preamble and is corrected by this notice.

1. On page 46668, column 3, line 46, change "fifteen" to "sixteen".

2. On page 46668, column 3, footnote 1, line 2, insert "New Orleans Steamship Association;" immediately after "comments:".

3. On page 46669, column 1, line 18, insert "New Orleans Steamship Association," before "West Gulf".

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–918 Filed 1–14–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 43

**[CC Docket 86–368, FCC 86–547]**

### Common Carrier Reporting Requirements; Elimination of FCC Form 903 and Form 905; Telegraph Reports

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission eliminated Report Form 903 and Report Form 905, the monthly reports filed by radiotelegraph, ocean-cable and wire-telegraph carriers which had operating revenues in excess of $250,000 for the preceding year. This rule is part of the Commission's overall effort to eliminate unnessary regulatory paperwork.

**EFFECTIVE DATE:** March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Alan Feldman, Common Carrier Bureau, Industry Analysis Division, (202) 632–0745.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's report and order, CC Docket 86–368, adopted December 16, 1986 and released December 31, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Report and Order**

Sections 1.786 and 43.31 of the Commission's Rules, 47 CFR §§ 1.786, 43.31, require Radiotelegraph, Ocean-Cable, and Wire-Telegraph carriers which had annual operating revenues in excess of $250,000 for the preceding year to file monthly reports of financial,

operating and statistical information. In this Report and Order we eliminated from these sections a reporting requirement that is unnecessary and burdensome. Specifically, we eliminated the monthly FCC Report Forms 903 and 905. Form 903 is required from Radiotelegraph and Ocean-Cable Carriers, and Form 905 is required from Wire-Telegraph carriers. Five companies filed Form 903 for 1985. They were FTCC McDonnell Douglas International Telecommunications Company, ITT World Communications Inc., RCA Global Communications Inc., TRT Telecommunications Corp., and Western Union International, Inc. Western Union Telegraph Company was the only company to file Form 905.

To further our goal of reducing unnecessary regulatory paperwork we eliminated Forms 903 and 905. The information in the forms has only been used by this Commission on an infrequent and limited basis. Although we summarize the forms on a quarterly basis, and generate an industry total, the quarterly summary is also rarely used by this Commission.

Eliminating the Form 903 and 905 does not preclude us from directing the affected carriers to file detailed information should the need arise. We believe that most of our needs for data are adequately met with the annual reports filed by these carriers. When necessary, special data requests can be tailored to specific needs. Since there is no ongoing need for monthly data, special studies will eliminate the need for radiotelegraph, ocean-cable and wire-telegraph carriers to submit monthly reports. This will not only reduce the costs to the carriers, it will also reduce this Commission's costs.

We presently believe that the annual reporting requirement, as defined in §§ 1.785 and 43.21 of the Commission's Rules, 47 CFR §§ 1.785, and 43.21, should be continued for these carriers. The annual reports (Forms O and R) provide more detail than contained in the monthly reports and are necessary for us to monitor the effects of competition on the traditional international carriers. As we gain experience with streamlined regulation and as the new international market structure develops, we will be in a better position to evaluate additional streamlining and forbearance options.

The rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to reduce information collection requirements on the public.

In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the reporting of radiotelegraph, ocean-cable, and wire telegraph carriers on monthly Form 903 and 905 will not have a significant economic impact on a substantial number of small entities and will ease the recordkeeping and reporting requirement of these carriers. According to the affected carriers, this reporting requirement imposes a minor reporting burden. Therefore, its cost is minimal. Additionally, most entities reporting this data are large companies.

*Ordering Clauses*

It Is Ordered, That pursuant to the provisions of section 4(i), 219, 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 219, 403 and 404, FCC Form 903 and Form 905, Monthly Reports of Radiotelegraph, Ocean-Cable and Wire-telegraph carriers, are eliminated, effective with the monthly reports for calendar year 1987.

It Is Further Ordered, That Part 1 and 43 of the FCC Rules and Regulations are amended as set forth below, effective March 31, 1987.

It Is Further Ordered, That this proceeding is hereby terminated.

**List of Subjects**

*47 CFR Part 1*

Communications common carriers, Reporting requirements, Radiotelegraph, Ocean-Cable, Wire-Telegraph.

*47 CFR Part 43*

Communications common carriers, Reporting and record-keeping requirements, Radiotelegraph, Ocean-Cable, Wire-Telegraph.

**William J. Tricarico,**

*Secretary.*

Parts 1 and 43 of the Code of Federal Regulations is amended as follows:

## PART 1—[AMENDED]

1. Authority citation for Part 1 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.786 is revised to read as follows:

**§ 1.786 Monthly financial reports.**

Monthly reports of revenues, expenses, and other items shall be filed by carriers as required by Part 43 of this chapter on the following: FCC Report 901—Telephone.

## PART 43—[AMENDED]

3. Authority citation for Part 43 continues to read:

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply Secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

4. Section 43.31(a) is revised to read as follows:

**§ 43.31 [Amended]**

(a) Each telephone common carrier which had operating revenues for the preceding year in excess of $100 million shall file with the Commission within forty (40) days after the end of each calendar month, a certified report on computer media as prescribed by the Commission.

* * * * *

[FR Doc. 87-629 Filed 1-14-87; 8:45 am]
BILLING CODE 6712-01-M

---

## 47 CFR Part 73

**[MM Docket No. 86-153; RM-5185]**

## Radio Broadcasting Services; Kingsville, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Suspension of final rule.

**SUMMARY:** On December 23, 1986, the Commission published a Final Rule amending § 73.202(b) in this proceeding concerning a channel assignment in Kingsville, TX (51 FR 45891). Since the Mexican government has not given its concurrence regarding this assignment, this action must be suspended until further notice. Such notice will be published in the **Federal Register.** Accordingly, the assignment of FM Channel 248C1 to Kingsville, Texas is suspended, and Channel 249A is reinstated, until further notice.

**DATE:** The suspension is effective January 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**William J. Tricarico,**

*Secretary, Federal Communications Commission.*

[FR Doc. 87-634 Filed 1-14-87; 8:45 am]
BILLING CODE 6712-01-M

---

## 47 CFR Parts 73 and 76

**[MM Docket 83-46; FCC 86-410]**

## Mass Media Services; Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has modified its guidelines used to attribute ownership interests to permit an exempt limited partner to remove a general partner for cause where the basis of removal is specified and a finding of liabiity to removal is independently determined.

**EFFECTIVE DATE:** February 12, 1987.

**ADDRESS:** Federal Communications Commission, Washington D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket 83-46, *et al.*, adopted September 26, 1986 and released November 28, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, D.C. 20037, (202) 857-3800.

**Summary of Memorandum Opinion and Order**

1. On November 28, 1986, the Federal Communications Commission ("Commission") released a *Memorandum Opinion and Order* in MM Docket No. 83-46, *et al.* in which it addressed the requests for reconsideration or clarification of the *Attribution Reconsideration Order*, 50 FR 27438 (July 3, 1985), filed by Sovereign Ventures ("Sovereign") and Miller and Fields, P.C. ("Miller").

2. After careful review of these requests, the Commission was persuaded to revise in one respect the guidelines contained in the *Reconsideration Order* clarifying the type of insulation necessary to permit the holder of a limited partnership interest to qualify for an exemption from attribution. The *Reconsideration Order* provided that an exempt limited partner could possess the power to remove a general partner only in situations involving bankruptcy and adjudicated incompetency. However, the Commission determined in this *Memorandum Opinion and Order* an unattributed limited partner should possess the power to remove a general partner for cause as long as the partnership agreement specifies that a neutral arbiter, rather than the limited partner, will make any factual determinations regarding the liability of a general partner to removal.

3. Sovereign also requested the Commission to exempt categorically from attribution the interest of any limited partner which possesses less than five percent equity interest in a licensee, whether or not that partner complies with the insulation criteria. The Commission rejected this request, stating that the express language of the attribution rules clearly provides that all interests of limited partners which do not satisfy the "no material involvement" standard are attributable, irrespective of the amount of equity that the partner may hold, that the scope of the regulation codifying the five percent ownership benchmark is unambiguously restricted to corporate, voting stock interests, and that neither the attribution rules nor the orders revising these rules lend any support to the existence of a blanket exemption for all limited partnership interests under five percent.

4. Further, the Commission stated that it would be inappropriate as a policy matter to extend categorically the scope of the five percent attribution threshold to encompass limited partnership interests, stating that the rationale underlying the five percent ownership benchmark does not support the extension in all cases of a comparable provision to limited partnership interests. The Commission noted that the rights of limited partners are not necessarily more restrictive than the rights of common stockholders, and that, contrary to Sovereign's assertion, application of the five percent threshold to limited partnership interests is not necessary to prevent the widespread and burdensome attribution of limited partnership interests under five percent.

5. The Commission denied as well Miller's request to clarify that a limited partner who provides legal services to the limited partnership relating to the licensing and operation of a broadcast station can nonetheless obtain an exemption from attribution under the "no material involvement" standard. Apart from two specified exceptions wholly unrelated to the provision of legal services, the Commission noted that the *Attribution Reconsideration Order* provided unambiguously that the partnership agreement should bar an exempt limited partner from providing "any" services which relate materially to the media activities of the partnership. Miller's assertion that the scope of this provision does not encompass legal services is thus at odds with the plain language of the *Reconsideration Order*. Moreover, the Commission pointed out that it would be difficult to envision legal services that are more directly related to the media activities of the partnership than those concerning the licensing and operation of broadcast entities, and stated that there were no policy reasons which would justify an exemption for legal services.

6. Finally, on its own motion, the Commission revised the ownership reporting obligations contained in § 73.3615 of its Rules to accurately reflect the changes made earlier in this proceeding.

7. As prescribed by the Regulatory Flexibility Act, the Commission prepared a final regulatory flexibility analysis ("FRFA") which outlines the effect of the modification to the attribution guideline on small entities. The FRFA is contained below.

**Final Regulatory Flexibility Analysis**

8. *Need for and Objective of the Rule.* Earlier in this proceeding, the Commission had determined, as a matter of policy, to limit the attribution of limited partnership interests to those interests which convey the ability to influence or control the media related activities of the partnership. In order to implement this policy, the Commission adopted guidelines designed to clarify the specific type of insulation which would qualify the holder of a limited partnership interest for an exemption from attribution. In the *Memorandum Opinion and Order* summarized above, the Commission decided that it could safely relax the guideline addressing the power of an exempt limited partner to remove a general partner for cause under certain conditions. Specifically, where the basis for removal is specified and a finding of liability to removal is independently determined, the Commission found that the power of a limited partner to remove a general partner for cause would not convey sufficient influence to the limited partner to warrant the attribution of his or her ownership interest.

9. *Issues Raised in Response to the Initial Regulatory Flexibility Analysis.* No party to this proceeding raised any issue specifically in response to the Initial Regulatory Flexibility Analysis contained in the *Notice of Proposed Rule Making*, the Final Regulatory Flexibility Analysis contained in the *Report and Order*, or the final Regulatory Flexibility Analysis contained in the *Reconsideration Order*.

10. *Significant Alternatives Considered and Rejected.* The Commission considered the retention of the attribution guidelines which

provided that a limited partner who is exempt from attribution could possess the power to remove a general partner only in situations involving bankruptcy and adjudicated incompetency. In rejecting this alternative, however, the Commission reasoned that this guidelne was overly restrictive and did not properly reflect the policy objectives underyling the attribution standards. Specifically, it determined that an expansion of the power of removal as adopted in the *Reconsideration Order* would more accurately limit attribution to truly influential ownership interests, eliminate unwarranted regulation, and assure that the attribution standards do not operate to unnecessarily inhibit investment in broadcasting facilities.

11. *Public Dissemination of this Document.* The *Memorandum Opinion and Order* summarized above, which includes this Final Regulatory Flexibility Analysis, is publicly available. This document can be reviewed at the Federal Communications Commission, Office of Congressional and Public Affairs, Room 202, 1919 M Street, NW., Washington, D.C. 20554. Members of the public may obtain copies of this document from International Transcription Services, Suite 140, 2100 M Street, NW., Washington, D.C. 20037.

12. The Commission also analyzed the requirements contained in the *Memorandum Opinion and Order* with respect to the Paperwork Reduction Act of 1980. In this regard, it found them to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and determined that they will not increase or decrease burden hours imposed on the public.

*Ordering Clauses*

13. Accordingly, it is ordered, That Parts 73 and 76 of the Commission's Rules and Regulations are amended effective January 5, 1987, as set forth below.

14. It is further ordered, That the "Petition for Further Reconsideration or Clarification" filed by Sovereign Ventures is granted to the extent described herein and is otherwise denied.

15. It is further ordered, That the "Motion for Clarification or for Declaratory Ruling" filed by Miller and Fields is denied.

16. Authority for the actions taken herein is contained in Sections 4(i), 4(j), 303 and 405 of the Communications Act of 1934, as amended.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

**List of Subjects**

*47 CFR Part 73*

Radio Broadcast Services.

*47 CFR Part 76*

Cable Television Service.

Parts 73 and 76 of Title 47 of Code of Federal Regulations are amended as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Parts 73 and 76 continues to read as follows:

**Authority:** 47 U.S.C., Sections 154 and 303.

2. 47 CFR 73.3555 NOTE 2 is amended by revising paragraph (g)(2) to read as follows:

**§ 73.3555 Multiple ownership.**

* * * * *

**Note 2:** * * *

(g) * * *

(2) In order for a licensee or system to make the certification set forth in paragraph (a)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83-46 FCC 85-252 (released June 24, 1985), as modified on reconsideration in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

* * * * *

3. 47 CFR 73.3615 is amended by revising paragraph (a) introductory text to read as follows:

**§ 73.3615 Ownership reports.**

(a) With the exception of sole proprietorships and partnerships composed entirely of natural persons, each licensee of a commercial AM, FM, or TV broadcast station shall file an Ownership Report on FCC Form 323 once a year, on the anniversary of the date that its renewal application is required to be filed. Licensees owning multiple stations with different anniversary dates need file only one Report per year on the anniversary of their choice, provided that their Reports are not more than one year apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of a date not more than 60 days prior to the filing of the Report:

* * * * *

3. 47 CFR 76.501(a) NOTE 2 is amended by revising paragraph (g)(2) to read as follows:

**§ 76.501 Cross-ownership.**

(a) * * *

**Note 2:** * * *

(g) * * *

(2) In order for a licensee or system to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985) as modified on reconsideration in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

* * * * *

[FR Doc. 87-633 Filed 1-14-87; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 671

**[Docket No. 61092-6201]**

### Tanner Crab off Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; extension of effective date.

**SUMMARY:** The Secretary of Commerce (Secretary) extends an emergency interim rule repealing the regulations implementing the Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP) in effect through January 29, 1987. This extension is necessary to give the Secretary sufficient time to prepare and implement a Secretarial amendment to repeal the FMP and its implementing regulations. The Secretarial amendment would allow the North Pacific Fishery Management Council time to prepare and the Secretary time to approve and implement a new FMP that corrects the operational difficulties which have caused probable violations of the national standards of the Magnuson Fishery Conservation and Management Act and other applicable Federal law.

**EFFECTIVE DATE:** January 30, 1987, through April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Raymond E. Baglin (Fishery Management Biologist, NMFS), 907–586–7229.

**SUPPLEMENTARY INFORMATION:** Under section 305(e) of the Magnuson Fishery Conservation and Management Act, the Secretary issued an emergency interim rule effective on November 1, 1986 (51 FR 40027, November 4, 1986), to repeal the regulations implementing the FMP for the Commercial Tanner Crab Fishery Off the Coast of Alaska. The reasons for this action, which are discussed in the preamble to the emergency interim rule, still continue and are not repeated here. At its December 1986 meeting the Council recommended that the Secretary extend this emergency interim rule for an additional 90 days to allow sufficient time for development and implementation of a Secretarial amendment which would provide additional time for development of a new FMP.

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Office of Management and Budget, with an explanation of why it is not possible to follow procedures of that Order.

(16 U.S.C. 1801 *et seq.*)

**List of Subjects in 50 CFR Part 671**

Fisheries, Reporting and recordkeeping requirements.

Dated: January 12, 1987.

**Carmen J. Blondin**

*Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 87–935 Filed 1–14–87; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 10
Thursday, January 15, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 252

### Landing of Alien Crewmen

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed Rule.

**SUMMARY:** This rule would govern the issuance of conditional landing permits to nonimmigrant crewmen who may be employed by U.S. Flag carriers during strikes in their bargaining units by providing the authority to refuse the issuance of such permits under defined circumstances.

**DATE:** Comments must be received on or before March 16, 1987.

**ADDRESS:** Please submit written comments, in duplicate, to the Director of Policy and Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:**

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048

For Specific Information: Ellis B. Linder, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–2745

**SUPPLEMENTARY INFORMATION:**

Questions most often arise during strike actions involving members of passenger airline crews as to the appropriateness of the hiring of nonimmigrant alien crewmen by U.S. Flag carriers. There is no prohibition to this practice currently contained in the Immigration and Nationality Act. Nonimmigrant alien crewmen may serve aboard U.S. Flag carriers as long as one leg of the flight is international in nature; they may not be utilized on flights which are purely domestic. Language contained in section 315(d) of Part B of the Immigration Reform and Control Act of 1986, provides that conditional landing permits may not be issued to nonimmigrant alien crewmen during strike actions by the bargaining units in which the alien intends to be employed.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This order would not be a major rule within the meaning of Section 1(b) of E.O. 12291.

**List of Subjects in 8 CFR Part 252**

Air carriers, Crewmen.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

## PART 252—LANDING OF ALIEN CREWMEN

1. The authority citation for Part 252 continues to read as follows:

**Authority:** Secs. 103, 214, 248, 251, and 252 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103, 1184, 1258, 1281, 1282.

2. Section 252.1 would be amended by redesignating existing paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

**§ 252.1 Examination of crewman.**

* * * * *

(h) *Restrictions in issuance of conditional landing permits.* For a period of one year ending November 5, 1987, a conditional landing permit will not be issued to a nonimmigrant alien crewman upon arrival in the United States, during any strike action in the bargaining unit of a U.S. Flag carrier employer in which such crewman intends to perform service. However, a conditional landing permit may be issued to a crewman if he or she was employed by the carrier prior to any strike action and is seeking admission as a crewman to the same extent and on the same route as performed prior to any strike.

Dated: December 30, 1986.

**Richard E. Norton,**

*Associate Commissioner, Examinations.*

[FR Doc. 87–921 Filed 1–14–87; 8:45 am]
BILLING CODE 44120–10–M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 62

### Intent to Develop Regulations to Establish Criteria and Procedures for Evaluating Requests for Emergency Access to Low-Level Radioactive Waste Disposal Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of intent to develop regulations.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing its intent to develop regulations to establish criteria and procedures for evaluating requests for emergency access to non-Federal low-level radioactive waste (LLW) disposal facilities. The regulations will be promulgated pursuant to the Commission's responsibilities under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) and will identify the information and certification that must be submitted by a LLW generator or a State to support a request for emergency access.

**FOR FURTHER INFORMATION CONTACT:** Janet Lambert, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, 301–427–4009.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to its responsibilities under section 6 of the LLRWPAA, the NRC is developing regulations to be used by the Commission in evaluating requests for emergency access to non-Federal LLW disposal facilities. Section 6 of the LLRWPAA authorizes the NRC to grant emergency access to any non-Federal LLW disposal facility, if the NRC determines that such action "is necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security", and if NRC determines that

"the threat cannot be mitigated by an alternative consistent with the public health and safety, including storage of low-level radioactive waste at the site of generation or in a storage facility obtaining access to a disposal facility by voluntary agreement, purchasing disposal capacity available for assignment or ceasing the activities that generate the low-level waste." The regulations will identify the information and certifications that must be submitted by a LLW generator or a State to support a request for emergency access. The regulations will also establish the NRC review procedures and the criteria that will be used by the Commission to make the determinations required by section 6 of the LLRWPAA.

Consistent with both the spirit and the letter of the LLRWPAA, the NRC plans to set strict requirements for granting emergency access. NRC intends to authorize emergency access to LLW disposal facilities only in those cases where the low-level waste generators or States requesting emergency access provide certification to NRC with clear and convicing evidence that an immediate and serious threat to the public health and safety or the common defense and security will result if such access is denied. Generators or States will also have to provide NRC with documentation demonstrating that the situation could not be mitigated by any alternative, including ceasing to generate the waste, in a manner which would be consistent with the public health and safety.

In addition to this information, States requesting emergency access will have to address the adequacy of their efforts to meet the milestones established in the LLRWPAA for siting a LLW disposal facility.

LLW generators in States that may be denied access to the existing LLW disposal facilities should plan for that contingency. Evidence of such advanced planning will be required as part of the information that must be submitted with a request for emergency access.

Requests for further information, or any issues or concerns identified relative to emergency access, should be brought to the attention of the staff contact.

Issuance of the proposed rule is planned for September of 1987.

Dated at Washington, DC, this 12th day of January, 1987.

For the Nuclear Regulatory Commission.

**Samuel Chilk,**

*Secretary of the Commission.*

[FR Doc. 87-945 Filed 1-14-87; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 1, 27, and 29

**[Docket No. 24848; Ref. Notice No. 85-23]**

## Helicopter Minimum Flightcrew; Withdrawal of Advance Notice of Proposed Rulemaking

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); withdrawal.

**SUMMARY:** This document withdraws an ANPRM which considered the need to amend the airworthiness standards for helicopters to require a minimum flightcrew of at least two pilots when power controls (throttles) are not incorporated as a part of the pilots' collective control. The objective of the proposal was to address a previous public concern identifying power control location as a significant safety matter. The ANPRM is being withdrawn because the FAA has concluded, after receiving written comments, and considering the comments made at a public meeting, that the minimum flightcrew issue is not a significant safety concern and that there would be a disproportionate economic impact if the proposal were adopted.

**FOR FURTHER INFORMATION CONTACT:** Mr. J.S. Honaker, Regulations Program Management, ASW-111, Rotorcraft Standards Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-5109 or FTS 734-5109.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 9, 1983, the FAA Rotorcraft Certification Directorate sent letters to approximately 75 persons and organizations associated with the worldwide rotorcraft community requesting their opinion of the five most important safety issues that could be addressed through changes to the certification requirements in the Federal Aviation Regulations (FAR). Those results were published on May 7, 1984 (49 FR 19309). One U.S. helicopter operator who responded listed as a first priority a proposed requirement for the power control to be located on the collective control for eligibility to be certified as a single-pilot helicopter.

In response to this recommendation, the FAA published ANPRM No. 85-23 (50 FR 48786; November 27, 1985) which proposed specific changes to Parts 1, 27, and 29 of the FAR and also invited interested persons to submit specific comments, suggestions, and recommendations to assist the FAA in determining the future course of action regarding this rulemaking activity. Also, in response to the Federal Register notice, a public meeting was held on April 30, 1986, at the Fort Worth, Texas, FAA Regional Office.

### Discussion of Comments

In response to the advance notice, comments were received from organizations and individuals representing widely varied interests. The 14 commenters that responded included foreign civil airworthiness authorities representatives, and manufacturers' organizations, as well as domestic helicopter users, manufacturers, pilots, and pilot organizations.

The majority of the commenters oppose adoption of the proposed rulemaking unless it is substantially revised. Although the reasons vary, most commenters state that a second pilot could not effectively assist in an emergency situation.

At the public meeting, a spokesperson for rotorcraft users (which included the user that originated the proposal) presented a revised proposal. The proposal, as revised, suggests changes to §§ 27.1143 and 29.1143 to require that the throttle be located so that the pilot can control the engine r.p.m. from idle through the flight positions without removing either hand from the primary controls. The revised proposal also contains a definition of "throttle control" and further recommends a change to §§ 27.1143 and 29.1143 to require a means for the pilot to retain control of engine r.p.m. in the event of an engine r.p.m. control system failure. This revised proposal is beyond the scope of the ANPRM proposal and, therefore, cannot be considered in this rulemaking activity. However, most of the persons at the public meeting supported the revisions, both by comments at the meeting and in written comments to the docket.

### Reasons for the Withdrawal

Based on the information and comments received in response to Advance Notice No. 85-23, the FAA has determined that there is not a significant safety concern that would be addressed by a minimum flightcrew limitation; therefore, the proposals contained in the notice are not appropriate for further rulemaking action. Based on the record of this proceeding and the requirements of Executive Order 12291 (46 FR 13193;

February 19, 1981), the rulemaking should be terminated.

**The Decision and Withdrawal**

Accordingly, I conclude that the FAA should not proceed with rulemaking based on the proposals contained in the ANPRM now pending. Therefore, Advance Notice No. 85–23 (50 FR 48786; November 27, 1985) is withdrawn. This action does not preclude the FAA from considering similar proposals in the future or commit it to any further or future course of action on this subject.

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The authority citation for Part 27 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

3. The authority citation for Part 29 continues to read as follows:

**Authority:** 49 U.S.C 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Issued in Fort Worth, Texas, on January 8, 1987.

**C.R. Melugin, Jr.,**

*Director, Southwest Region.*

[FR Doc. 87–850 Filed 1–14–87; 8:45 am]

**BILLING CODE 4910–13–M**

---

## Coast Guard

## 33 CFR Part 117

**[CGD7 86–56]**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of Florida State Senator James A. Scott, the Coast Guard is considering a change to the regulations governing the Oakland Park Boulevard bridge at Fort Lauderdale to extend the hours during which bridge openings may be limited. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

**DATE:** Comments must be received on or before March 2, 1987.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130–1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida 33130–1608. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brodie Rich, (305) 536–4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended change in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determined a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

**Drafting Information**

The drafters of this notice are Mr. Brodie Rich, Bridge Administration Specialist, project officer, and Lieutenant Commander S. T. Fuger, Jr., project attorney.

**Discussion of Proposed Regulations**

The Oakland Park Boulevard bridge presently opens on signal from May 15 until November 15. From November 15 until May 15, it opens every 20 minutes from 7 a.m. to 6 p.m. on weekdays and every 15 minutes from 10 a.m. to 6 p.m. on weekdays and holidays. The proposed rule would extend scheduled operations to 10 p.m. This should reduce or eliminate highway traffic congestion caused by "back-to-back" bridge openings by allowing sufficient time for accumulated vehicular traffic to disperse between openings.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposal Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–l(g).

2. Section 117.261 is proposed to be amended by revising paragraph (ff) to read as follows:

**117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.**

* * * * *

(ff) *Oakland Park Boulevard Bridge, mile 1060.5 at Fort Lauderdale.* The draw shall open on signal; except that from November 15 through May 15 from 7 a.m. to 10 p.m., Monday through Friday, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, and from 10 a.m. to 10 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: January 6, 1987.

**H.B. Thorsen,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 87–910 Filed 1–14–87; 8:45 am]

**BILLING CODE 4910–14–M**

---

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

## Migratory Bird Hunting: Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1987–88 Hunting Season

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** Spent lead shot from waterfowl hunting poses an unnecessary risk to certain migratory birds because when consumed it often produces lead poisoning and death. As lead poisoning is a significant annual mortality factor in these birds, the process of deciding whether, where, and how migratory bird hunting will be allowed under the Migratory Bird Treaty Act must take into account where further curtailment of lead shot deposition is necessary to protect these species from lead shot exposure and the resultant mortality. This rule, the second phase of the implementation of the preferred alternative presented in the Final Supplemental Environmental Impact Statement (SEIS) on the use of lead shot for hunting migratory birds in the United States, describes the zones in which it is proposed to ban the use of lead shot for hunting waterfowl, coots and certain other species in the 1987–88 season. It describes the same areas that are identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1986–87 hunting season and the added counties identified for 1987–88 in Appendix N of the Final SEIS (see Table 1 in Supplementary Information). States that have declared a statewide ban on the use of lead shot for waterfowl and coot hunting have been so noted. In addition, this rule proposes to amend existing regulations to prohibit, within designated nontoxic shot zones, lead shot use for waterfowl hunting in all firearms and to add to the number of species covered in nontoxic shot zones where the hunted species are affected by concurrent seasons and aggregate bag limits.

**DATE:** Comments on this proposal will be accepted until February 17, 1987.

**ADDRESSES:** Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240 (202/254–3207).

**SUPPLEMENTARY INFORMATION:** The problem of lead poisoning in waterfowl resulting from the deposition of lead shot while hunting has been known for at least the last 100 years. Over the past 2–3 decades, because of an unacceptably high annual lead poisoning-related mortality in waterfowl, wildlife managers and others have recognized and espoused a need to find an acceptable nontoxic substitute for lead shot to alleviate the lead poisoning problem. In 1976, the Fish and Wildlife Service (FWS), Department of Interior, published a Final Environmental Statement (FES–76) on the proposed use of steel shot for hunting waterfowl in the United States. The preferred action presented at that time, and followed since, sought to limit further deposition of lead shot in areas used by waterfowl in order to eliminate lead poisoning from ingested lead shot as a significant mortality factor among these birds. Thus, since 1976, nontoxic shot has been required for hunting waterfowl at numerous locations throughout the United States.

Since the completion of FES–76, it has become apparent that lead poisoning from waterfowl hunting is manifesting itself in the endangered and threatened bald eagle populations of the United States. Because of this additional and important finding, and because of the Secretary of Interior's responsibilities under the Migratory Bird Treaty Act (MBTA), as amended (16 U.S.C. 703 et seq.; 40 Stat. 755), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), the FWS has completed a Final SEIS on the use of lead shot for hunting migratory birds in the United States (FES 86–16, June 1986). In this Final SEIS, a complete review and analysis of the lead poisoning problem in migratory birds is made. Evidence is presented in the SEIS that lead poisoning among waterfowl and bald eagles is of sufficient magnitude that a program to ban the use of lead shot for waterfowl and coot hunting nationwide is necessary for compliance with the Secretary's statutory requirements in deciding whether, where, and how migratory bird hunting will be allowed under the MBTA.

The strategy selected in the Final SEIS to remedy the lead poisoning problem in waterfowl and bald eagles is to phase-in nationwide a ban on the use of lead shot for hunting waterfowl and coots over a 6-year period of time. In the initial year of implementation of this strategy (1986–87), nontoxic shot zones were established utilizing criteria to protect both waterfowl and bald eagles. In the 1986–87 hunting season approximately 49 percent of the waterfowl harvest nationwide will occur in nontoxic shot zones in 44 States. Nontoxic shot zones for the 1986–87 waterfowl hunting season were published in the **Federal Register** on September 3, 1986 (51 FR 31429). For the remaining 5 years of the strategy, use of lead shot for waterfowl hunting will progressively be eliminated on a zone (county or county-plus) basis utilizing criteria for waterfowl only. This 5-year component of the 6-year strategy was adopted by the FWS on the recommendation of the International Association of Fish and Wildlife Agencies, and supported by a majority of the States. The salient feature of the criteria and schedule for the 5-year component of the lead shot phase-out is that the ban begins with zones having the highest levels of waterfowl harvest (greater than 20 birds/square mile) and proceeds decrementally to those having the lowest levels (less than 5 birds/square mile). In addition, zones scheduled for conversion to nontoxic shot may be deferred through monitoring, but not beyond the nationwide ban hunting season of 1991–92. The final rule on the implementation of this 5-year component of the lead phase-out strategy was published in the **Federal Register** on November 21, 1986 (51 FR 42098).

Information detailing the development of this Final SEIS strategy to eliminate lead toxicity as a major mortality factor in waterfowl and bald eagles, including discussions of the issues for and against lead/steel shot, appears in the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987–88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for that proposed rule was published, as noted above, in the **Federal Register** on November 21, 1986 (51 FR 42098). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative $VII_3$), the June 27, 1986, proposed rule and in the Record of Decision (ROD) confirming the preferred alternative and published in the **Federal Register** on August 20, 1986 (51 FR 29673). In compliance with 40 CFR 1505.2, the ROD was signed by the Director, FWS, and the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, on August 11, 1986.

This rule would implement the first year (1987–88) of the 5-year strategy to phase-in a nontoxic shot requirement nationwide by 1991–92, as set out by the preferred alternative of the Final SEIS on the use of lead shot for hunting migratory birds in the United States. In addition, this rule proposes to modify existing regulations to the extent that: (a) all persons taking waterfowl with firearms would be subject to a prohibition on the use of lead shot in nontoxic shot zones and (b) there would be an expansion of the coverage of migratory bird species hunted in nontoxic shot zones where there exists a

condition of aggregate bag limits and concurrent seasons, when one or more of the species involved would not not ordinarily be covered by the strictures for using nontoxic shot.

It is aniticpated that, with the increasing popularity of the muzzleloading sport, there will be a growing number of waterfowlers who will use muzzleloading firearms. For this current hunting year (1986–87), a contradiction within the regulations, those at 50 CFR 20.108 and those in the "taking" section (§ 20.21), allows muzzleloading waterfowl hunters to use lead shot in nontoxic shot zones. In the final rule published November 21, 1986 (51 FR 42098), the FWS briefly addressed the use of lead shot in muzzleloading shotguns for hunting waterfowl. It was stated that "The FWS believes that a 'fairness' principle should be a primary consideration," meaning that all waterfowl hunting should be included under the developing nationwide ban on the use of shot because all lead pellet sources, including muzzleloading, contribute to the lead poisoning problem. There appears to be no valid reason to exempt muzzleloading from a lead shot use ban in nontoxic shot areas. The FWS proposes to resolve this existing situation with regard to the use of lead shot in other than shotshells by amending 50 CFR 20.21(j) to cover all shot, including loose shot, used in nontoxic shot zones. The pertinent regulation, 50 CFR 20.21(j), would be rewritten to prohibit the possession and/or use of lead shot in a nontoxic shot zone while taking waterfowl, coots and/or other species covered by concurrent seasons and aggregate bag limits.

The muzzleloading issue raises an additional concern with regard to nontoxic shot zones that the FWS believes could lead to potential management/enforcement problems for State and Federal authorities if allowed to go unaddressed. Up to the present time, the FWS has formulated nontoxic shot zone regulations under the premise that nontoxic shot zone management could effective by applying the restriction for nontoxic shot use only to waterfowl (the Anatidae-ducks, geese [including brant] and swans) and coots (*Fulica americana*). It has become apparent, during deliberations over the 1986–87 frameworks for migratory bird hunting regulations, that this premise is faulty. There are currently (1986–87) nontoxic shot zones in the Pacific Flyway (California) in which it is legal to take common moorhens (*Gallinula chloropus*) with lead shot, although they may also be taken in an aggregate limit with coots. Coots, however, may only be taken with nontoxic shot in nontoxic shot zones. Thus, the FWS proposes in this rulemaking to establish by regulation that if nontoxic shot is required for taking one or more species of an aggregate bag limit, it must also be used for taking all other species in the same aggregate. In the future, there may be other States and other species that will be affected by such a rulemaking.

When commenting on this proposed rules, commentors are urged to consult the final rule on the criteria and schedule for implementing nontoxic shot zones for 1987–88 and subsequent waterfowl hunting seasons (51 FR 42098), especially in regard to the provision for designating zones that may be greater, but not less, than the scheduled county. All interested persons may submit written comments, suggestions or objections, concerning this proposal to the Director (address above) by the end of the comment period. All relevant comments will be considered by the Department of the Interior, FWS, prior to issuance of a final rule.

Since 1978, the FWS has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the FWS has been contained in the Interior Department Apprporiations Act each year since 1978 (Pub. L. 98–473, section 305). As a consequence of this restriction, the FWS can only implement and enforce nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the FWS' responsibilities under the Migratory Bird Treaty Act and, in the case of zones established for bald eagle protection, the Endangered Species Act and the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668–668d; 54 Stat. 250).

Table 1.—Counties proposed to be added in 1987–88 to the existing zones where the hunting of waterfowl, coot and certain other species is limited to the use of nontoxic shot.*

| State and County |
|---|
| Arkansas |
| Arkansas |
| Ashley |
| Clay |
| Craighead |
| Cross |
| Desha |
| Jefferson |
| Lawrence |
| Little River |
| Lonoke |
| Monroe |
| Poinsett |
| Prairie |
| Woodruff |
| California |
| Butte |
| Colusa |
| Contra Costa |
| Glenn |
| Imperial |
| Inyo |
| Merced |
| Sacramento |
| San Bernardino |
| San Joaquin |
| Solano |
| Sutter |
| Yolo |
| Yuba |
| Delaware |
| Kent |
| New Castle |
| Florida |
| Leon |
| Idaho |
| Canyon |
| Gooding |
| Jefferson |
| Illinois |
| Carroll |
| Cass |
| Clinton |
| Henderson |
| Jefferson |
| Lake |
| Mason |
| Putnam |
| Indiana |
| Newton |
| Starke |
| Iowa |
| Allamakee |
| Bremer |
| Clinton |
| Fremont |
| Louisa |
| Kansas |
| Montgomery |
| Neosho |
| Louisiana |
| Acadia |
| Bossier |
| Caddo |
| Calcasieu |
| Cameron |
| Evangeline |
| Jefferson |
| Jeff. Davis |
| La Fourche |
| La Salle |
| Morehouse |
| Natchitoches |
| Orleans |
| Ouachita |
| Plaquemines |
| Red River |
| St. Bernard |
| St. Charles |
| St. James |
| St. John the Baptist |

St. Mary
St. Tammany
Terrebonne
Vermilion
Maine
Sagadahoc
Maryland
Cecil
Kent
Queen Annes
Somerset
Talbot
Worchester
Massachusetts
Barnstable
Essex
Nantucket
Plymouth
Michigan
Bay
Huron
Macomb
Saginaw
St. Clair
Tuscola
Minnesota
All lands and waters of all counties of the State
Mississippi
All lands and waters of all counties of the State
Missouri
Chariton
Henry
Holt
Linn
Pike
St. Charles
Vernon
New Jersey
Atlantic
Cape May
Cumberland
Middlesex
Monmouth
Ocean
Salem
New York
Genesee
Jefferson
Nassau
Suffolk
Wayne
North Carolina
Currituck
Pamlico
North Dakota
Nelson
Ramsey
Towner
Ohio
Lucas
Ottawa
Oklahoma
Nowata
Oregon
Columbia
Harney
Multnomah
Polk
Yamhill
Rhode Island
Bristol
Washington
South Carolina
Georgetown
South Dakota
Kingsbury
Washabaugh
Tennessee
Benton
Dyer
Shelby
Texas
Colorado
Harris
Jefferson
Nueces
Waller
Utah
Cache
Davis
Salt Lake
Vermont
Grand Isle
Virginia
Charles City
Hampton City
Gloucester
James City
Nansemond
New Kent
Newport News
Norfolk
Princess Anne
York
Washington
Clark
Franklin
Grant
Skagit
Wisconsin
All lands and waters of all counties of the State.

* Counties listed are taken from the Final Supplemental environmental Impact Statement on the use of lead shot for hunting migratory birds in the United States, Apendix N. Counties listed are those that have 20 or more waterfowl harvested per square mile, as referenced by Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during the 1971–80 hunting seasons. U.S. Fish and Wildife Service, Spec. Sci. Rpt.—Wildl. No. 254, Washington, DC). "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bag limits and concurrent seasons.

**Economic Effect**

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

**Paperwork Reduction Act**

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Environmental Considerations**

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the endangered Species Act, a Section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The Section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as set forth below:

## PART 20—[AMENDED]

1. The authority citation for Part 20 would continue to read as follows:

**Authority:** Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04, unless otherwise noted.

2. Section 20.21 would be amended by revising paragraph (j) to read as follows: (The introductory paragraph is being republished.)

**§ 20.21 Hunting methods.**

Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No person shall take migratory game birds . . .

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, Provided, That this restriction applies only to the taking of Anatidae (ducks, geese [including brant]), coots (*Fulica americana*) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones.

3. Section 20.108 would be revised to read as follows:

**§ 20.108 Nontoxic shot zones.**

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

Atlantic Flyway

*Connecticut*

1. That portion of New Haven and Fairfield Counties bounded by a line beginning at the north end of the breakwater at Milford Point extending south to Stratford Point, north along Prospect Drive and Route 113 to Interstate 95, easterly along I–95 to Naugatuck Avenue, southerly along Naugatuck Avenue and Milford Point Road and continuing along a line extending from the end of Milford Point Road to the north end of the breakwater at Milford Point.

2. That portion of New Haven County along the Quinnipiac River, known as the Quinnipiac Meadows, beginning at the intersection of Sackett Point Road and I–91, extending south along I–91 to Route 5, northerly along Route 5 to Sackett Point Road, and easterly along Sackett Point Road to I–91.

*Delaware*

1. Kent and New Castle Counties.

2. All State and/or Federally owned property within the following areas of Sussex County:

a. Assawoman, Gordon's Pond and Prime Hook State Wildlife Areas.

b. Cape Henlopen and Delaware Seashores State Parks.

c. Prime Hook National Wildlife Refuge.

*Florida*

1. Brevard, Broward, Citrus, Collier, Dade, Leon, Osceola, Polk and Volusia Counties.

2. That portion of Lake Miccosukee in Jefferson County.

3. Orange Lake and Lochloosa Lake in Alachua County.

4. The area lying lakeward of and bounded by the Lake Okeechobee levee, by the State Road 78, Kissimmee River bridge, and by State Road 78 from its intersection with the Lake Okeechobee levee at points near Lakeport and the Old Sportsman's Village site.

5. Occidental Wildlife Management Area, as well as all of the Occidental Chemical Company phosphate pits east of US Highway 41, south of State Road 6, west of State Road 135 and north of White Springs, all in Township 1 north, Ranges 15 and 16 east in Hamilton County comprising approximately 35,000 acres.

6. Lake Ponte Vedra in St. Johns County (all waters north of Guana Dam).

7. M–K Ranch public waterfowl area in Gulf County.

8. That portion of Everglades Conservation Area 2 in Palm Beach County.

9. That portion of Lake George lying in Putnam County.

10. That portion of the St. Johns River floodplain lying in Lake, Seminole, and Orange Counties.

11. That portion of Lake Rousseau lying in Levy and Marion Counties.

12. Chassahowitzka, Lower Suwannee and Loxahatchee National Wildlife Refuges.

*Georgia*

1. Eufaula and Savannah National Wildlife Refuges.

*Maine*

1. Sagadahoc County.

2. Those portions of State Wildlife Management Unit 6 located in Hancock and Washington Counties.

3. The following portion of Washington County: Commencing at the junction of State Highway 6 and the Canadian Border at Vanceboro, continuing west on State Highway 6 to the junction of U.S. Highway 1 at Topsfield, thence south on U.S. Highway 1 to where it enters State Wildlife Management Unit 6 at the Baileyville-Baring town lines.

*Maryland*

1. Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot and Worcester Counties.

*Massachusetts*

1. Barnstable, Essex, Nantucket and Plymouth Counties.

*New Jersey*

1. Atlantic, Cape May, Cumberland, Middlesex, Monmouth, Ocean and Salem Counties.

2. Burlington County, that portion east of the Garden State Parkway.

*New York*

1. Genesee, Jefferson, Nassau, Suffolk and Wayne Counties.

All waters (including bays, lakes, ponds, marshes, swamps, rivers, streams, and ocean waters but not including temporary or sheet water and all land areas within 150 yards of all waters of the following portions of New York:

2. That portion of upstate New York, outside of Genesee, Jefferson and Wayne Counties, that is west of I–81 and north of I–90, and within a 150-yard zone of land adjacent to the margins of said waters in those areas, but not to include drainage ditches and temporary sheet waters outside the 150-yard zone of land adjacent to the margins of aforesaid waters, nor the waters of the Niagara River north of the Peace Bridge and the waters of Lake Ontario, outside the barrier beach, from the mouth of the Niagara River in Niagara County to the Jefferson County line on the south.

3. Oneida Lake and adjacent areas bounded on the north by Route 49, on the east by Route 13, on the south by Route 31 and on the west by I–81.

4. That area including and adjacent to the Hudson River south of an imaginary line extending perpendicular from the east and west shores and passing through the fixed marker number 13 in the river near Lampman Hill in the Town of Coxsackie, and north of an imaginary line extending perpendicular from the east and west shores and passing through buoy number 28 in the river near Tyler Point in the Town of Ulster.

5. Bashakill, Upper and Lower Lakes and Wilson Hill Wildlife Management Areas.

*North Carolina*

1. Currituck and Pamlico Counties.

2. Cape Hatteras National Seashore Recreation Area.

3. Cedar Island, Mattamuskeet and Swanquarter National Wildlife Refuges.

*Pennsylvania*

1. Crawford County.

2. The waters of the Susquehanna River beginning at the confluence of the North and West branches at Northumberland and continuing southward to the Maryland-Pennsylvania State boundary and including a 25-yard zone of land adjacent to the waters of the Susquehanna River that are described above.

3. Middle Creek Wildlife Management Area.

*Rhode Island*

1. Bristol and Washington Counties.

*South Carolina*

1. Georgetown County.

2. Savannah National Wildlife Refuge.

*Vermont*

1. Grand Isle County.

2. Missisquoi National Wildlife Refuge.

*Virginia*

1. Charles City, Hampton City, Gloucester, James City, Nansemond, New Kent, Newport News, Norfolk, Princess Anne and York Counties.

Mississippi Flyway

*Alabama*

1. Eufaula National Wildlife Refuge.

*Arkansas*

1. Arkansas, Ashley, Clay, Craighead, Cross, Desha, Jefferson, Lawrence, Little River, Lonoke, Monroe, Poinsett, Prairie and Woodruff Counties.

2. Lake Dardanelle and Millwood Lake Wildlife Management Areas.

3. That portion of the White River National Wildlife Refuge within Phillips County.

*Illinois*

1. Alexander, Calhoun, Clinton, Jackson, Jefferson, Lake, Union and Williamson Counties.

2. Carroll County, that portion east of IL–84.

3. Cass County, that portion east and/or south of IL–78, Federal-Aid Secondary Route 577 and IL–100.

4. Franklin County, that portion of Rend Lake and related subimpoundments, and all adjacent lands managed by the U.S. Army Corps of Engineers and the Illinois Department of Conservation.

5. Henderson County, that portion east and/or south of Federal-Aid Secondary Route 216, IL–164, Federal-aid Secondary Route 418 and IL–96.

6. Mason County, that portion east and/or south of Federal Aid Secondary Route 461, US 136 and IL–78.

7. Putnam County, those portions west of IL–29 and east and/or south of IL–89, IL–71 and IL–26.

8. That portion of the Mississisppi River and adjacent areas as bordered on the north by the Wisconsin State line and bordered on the east and south by IL–35 from the Wisconsin State line southwest to East Dubuque, US–20 from East Dubuque southeast to IL–84, IL–84 south to IL–136 near Fulton, Federal-Aid Secondary Route 1193 (Chase Road and Sand Road) south to IL–5, and IL–5 south west to I–80, I–80 south to I–280 west to IL–92, and IL–92 west to the bridge over the Mississippi River.

9. That portion of the Mississippi River and adjacent areas as bordered on the north by the railroad bridge at Keithsburg and bordered on the east and south by Federal-Aid Secondary Route 216 from Keithsburg south to IL–164, IL–164 west to Oquawka and south to US–34, US–34 southwest to Federal-Aid Secondary Route 418 south through Carman to Lomax, IL–96 from Lomax to Niota then southward through Nauvoo and Hamilton to Lima. Federal-Aid Secondary Route 2597 from Lima west to County Highway 7, south to County Highway 8 and County Highway 8 west to Meyer at Lock and Dam 20.

10. That portion of the Mississippi River and adjacent areas as bordered on the north by US–36 and bordered on the east (or inland) by IL–96 from US–36 south to Mozier, Federal-Aid Secondary Route 755 from Mozier south through Hamburg, Gilead, Batchtown and Beechville to Federal-Aid Secondary Route 764 approximately 1 mile west of Golden Eagle, Federal-Aid Secondary Route 764 east to Golden Eagle and north to Federal-Aid Secondary Route 754 (County Highway 1), Federal-Aid Secondary Route 754 east to Brussels Ferry on the Illinois River, and IL–100 from the Brussels Ferry east to Grafton.

11. That portion of the Illinois River and adjacent areas as bordered on the north and west by IL–29 from Spring Valley west to DePue and south to Peoria, US–24 from Peoria southwest to Fulton County, all of Fulton County, IL–100 from Fulton County southwest to US–67, IL–103 from US–67 west to Sugar Grove, Federal-Aid Secondary Route 582 from Sugar Grove south through LaGrange to IL–99 southwest to Meredosia, and bordered on the east and south by IL–89 from Spring Valley south to IL–71, IL–71 west to IL–26, IL–26 south to East Peoria, IL–29 from East Peoria south to Powerton, Federal-Aid Secondary Route 461 from Powerton west and south through Manito and Forest City to US–136, US–136 west to Havana, IL–78 from Havana south to Chandlerville, Federal-Aid Secondary Route 577 from Chandlerville west to Beardstown, IL–100 from Beardstown south to IL–104, and IL–104 west to Meredosia.

12. That portion of the Illinois River and adjacent areas as bordered on the west by IL–100 from the ferry at Kampsville south to Hardin, Federal-Aid Secondary Route 754 (County Highway 1) from Hardin south to Brussels and east to the Brussels Ferry, and bordered on the north and east by IL–108 from the ferry at Kampsville east to Eldred, Federal-Aid Primary Route 155 from Eldred south to IL–100 and IL–100 south to the Brussels Ferry.

13. Adams County the Bear Creek Unit of Mark Twain National Wildlife Refuge.

14. Upper Mississippi River Wild Life and Fish Refuge.

*Indiana*

1. Newton and Starke Counties.

2. On all waters of Lake, Porter (except that area south of U.S. 30 and north of S.R. 8) LaPorte, Jasper (north of S.R. 114), Elkhart, Kosciusko, LaGrange and Steuban Counties and within a 150-yard zone of land in these counties adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Excluded from the provisions for these Counties are the waters of Lake Michigan and drainage ditches and temporary sheet waters that are more than 150 yards from the waters described above.

3. All waters and within a 150-yard zone of land adjacent to the margins of these waters on the Jasper-Pulaski, Tri-County and Glendale Fish and Wildlifle Areas.

4. Within the boundaries of the following State-owned or State-operated properites: Hovey Lake Fish and Wildlife Area in Posey County, Mallard Roost Wetland Conservation Area in Noble County, Monroe Reservoir in Monroe and Brown Counties, Patoka Reservoir in Dubois, Crawford and Orange Counties, Turtle Creek State Fish and Wildlife Area in Sullivan County and Minnehaha Fish and Wildlife Area in Sullivan County.

5. Within the proposed boundries of the Menominee Wetlands Conservation Areas in Marshall County.

*Iowa*

1. Allamakee, Bremer, Clinton, Freemont and Louisa Counties.

2. In all other counties, on all lands and waters under the jurisdiction of the State Conservation Commission, the United States Government or any county conservation board. Also, on all waters and a 150-yard zone of land adjacent to these waters, including reserviors, lakes, ponds, marshes, bayous, swamps, rivers, streams, and seasonally flooded areas of all types, except that temporary sheet water, farm ponds smaller than two surface acres in size, and streams with the water less than 25 feet in average width at the site where the hunting is occurring shall be excluded from the steel shot requirement, provided they are at least 150 yards from the water areas described above.

*Kentucky*

1. Western Zone—That area west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, and running northeast along the Purchase Parkway to Interstate 24, east to U.S. Highway 641, north to U.S. Highway 60, north to U.S. Highway 41, then north to the Kentucky-Indiana border near Henderson, Kentucky.

*Louisiana*

1. Acadia, Bossier, Caddo, Calcasieu, Cameron, Evangeline, Jefferson, Jefferson Davis, LaFourche, LaSalle, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Red River, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Terrebonne and Vermilion Parishes.

*Michigan*

1. Bay, Huron, Saginaw and Tuscola Counties.

2. Macomb and St. Clair Counties, (those portions north and west of I–94).

3. Chippewa County. That area within the following described boundary: Starting at the SW corner of Sec. 33, T44N, R1E on a line extending north 4 miles along the west side of Secs. 33, 29, 21, and 16 to the NW corner of Sec. 16, T44N, R1E; then east 1–½ miles to the S quarter corner of Sec. 10, T44N, R1E; then north 1 mile to the N quarter corner of Sec. 10, T44N, R1E; then east ½ mile to the SW corner of Sec. 2, T44N, R1E; then north 1 mile to the NW corner of Sec. 2, T44N, R1E; then east along the north section lines of Secs. 1 and 2, T44N, R1E and Secs. 4, 5, and 6, T44N, R2E, to the NE meander corner of Sec. 4, T44N, R2E; then on a line southerly across Munuscong Lake to the NE meander corner of Sec. 28, T44N, R2E; then south on the E section lines of Secs. 28 and 33, T44N, R2E to the SE corner of Sec. 33, T44N, R2E; then west 7 miles along the south section line of Sec. 33, 32, and 31, T44N, R2E, and Secs. 36, 35, 34, and 33, T44N, R1E, to the point of beginning-the area the same as that named the "Munuscong Bay Goose Management Area."

4. The waters of Potagannissing Wildlife Flooding on Drummond Island.

5. Roscommon County. That area of water and land encompassing Houghton Lake, Roscommon County, described by road boundaries as follows: south of Meads Landing Road, County 300 and County 100; west of M–18; north of M–55; and east of US–27.

6. Arenac County—Saginaw Bay. That area south of US–23, east of M–13, north of Bay County.

7. Gratiot County. That area of land and water in central Michigan encompassing the controlled water level impoundments

(wetlands wildlife management units) of the Maple River State Game Area adjacent to US–27, as posted.

8. That area of Jackson County (north of I–94 and east of M–106); Ingham County (east of M–106/M–52 and south of M–36); Livingston County (south of M–36, east of M–155 and south of M–59); Oakland County (south of M–59, west of US–24 [Telegraph Road], north of I–96 and west of I–275); Wayne County (West of I–275 and north of M–14); Washtenaw County (north of M–14 and I–94); and St. Clair, Macomb, Wayne and Monroe Counties east of I–94 and I–75 including the U.S. waters of the St. Clair River, Lake St. Clair, the Detroit River and Lake Erie.

9. That area of water and land encompassing Muskegon, Ottawa and Kalamazoo Counties, and Allegan County west of US–131, including the waters of Lake Michigan lakeward for one-half mile from the shore. All county boundary waters and lakes partially within the steel shot zone are totally included.

10. Jackson County. On all lands and waters within the posted boundaries of the U.S. Fish and Wildlife Service Schlee Waterfowl Production Area located in Section 6, T3S R2E of Grass Lake Township.

*Minnesota*

All lands and waters within the State of Minnesota have been designated for nontoxic shot use.

*Mississippi*

All lands and waters within the State of Mississippi have been designated for nontoxic shot use.

*Missouri*

1. Chariton, Linn and Vernon Counties.

2. Henry County, that portion east of Missouri Highway 13.

3. Holt County, that portion east of I–29.

5. Pike and St. Charles Counties, those portions west of U.S. Highway 61.

6. The northwest Missouri area, west of I–29 from St. Joseph to the Iowa State line.

7. The northeast Missouri area, north of the Missouri River from its confluence with the Mississippi River west to U.S. Highway 61, then east of U.S. Highway 61 to Hannibal.

8. The southwest Missouri area, bounded by Missouri Highway 2 on the north, Missouri Highway 13 on the east, U.S. Highway 54 on the south, and U.S. Highway 71 on the west.

9. The southeast Missouri area, bounded by Missouri Highway 34 on the North, Missouri Highways 51, 91 and 25 on the east, U.S. Highway 62 on the south, and U.S. Highway 67 and Missouri Highway 53 on the west.

10. The following State Wildlife Management Areas: Ben Cash, Bob Brown, Coon Island, Dark Cypress, Duck Creek, Fountain Grove, Four Rivers, Grand Pass, Hornersville Swamp, Marais Temps Clair, Montrose, Otter Slough, Schell-Osage, Seven Island, Ted Shanks and Ten Mile Pond. (Note: These areas may lie within the zones described above.)

*Ohio*

1. Lucas and Ottawa Counties.

2. On the Maumee River in Wood County, and on all waters of Cuyahoga, Erie, Holmes, Sandusky and Wayne Counties and within a 150-yard zone of land adjacent to the margins of these waters. These waters include lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described are excluded from the nontoxic shot requirements.

*Tennessee*

1. Benton, Dyler, Lake, Obion and Shelby Counties.

2. Cross Creeks, Hatchie and Lower Hatchie National Wildlife Refuges.

*Wisconsin*

All lands and waters within the State of Wisconsin have been designated for nontoxic shot use.

**Central Flyway**

*Colorado*

1. Weld and Morgan Counties.

*Kansas*

1. Barton, Coffey, Cowley, Doniphan, Ellsworth, Jefferson, Mitchell, Montgomery, Neosho and Stafford Counties.

2. All areas administered by the Kansas Fish and Game Commission, U.S. Army Corps of Engineers and U.S. Bureau of reclamation, including those within the boundaries of the above Counties.

3. Kirwin Reservoir.

4. Flint Hills, Kirwin and Quivira National Wildlife Refuges.

*Montana*

1. Yellowstone County.

*Nebraska*

1. All lands and waters within the State of Nebraska have been designated for nontoxic shot use.

*New Mexico*

1. Colfax County.

2. That area bounded by a line beginning at the northeast corner of the Bosque del Apache National Wildlife Refuge (BNWR) boundary and running east to the road joining the White Sands Missile Range Military Reservation Extension Co-Use (WSMRMREC) boundary from the northwest, thence southeast along the road to its junction with the MSMRMREC boundary, thence north, east, and west along the WSMRMREC boundary to its junction with the Sevilleta National Wildlife Refuge (SNWR), thence north and east along the boundary of the SNWR to its intersection with U.S. Highway 60, thence west along U.S. Highway 60 to its junction with State Highway 47, thence north along State Highway 47 to its intersection with the Isleta Indian Reservation, thence west and south along the southern boundary of the Isleta Indian Reservation to its intersection with Interstate Highway 25, thence south along Interstate Highway 25 to its junction with the SNWR boundary, thence following the SNWR boundary west, north, then south and east to Interstate Highway 25, thence south along Interstate Highway 25 to its juction with BNWR boundary and following the BNWR boundary west, southwest, southeast, east, and northeast to the northeast corner of BNWR. This zone includes Belen, Bernardo, and La Joya State Game Refuges.

3. That area bounded by a line starting at the junction of State Highway 3 and State Highway 21 and running northeast along State Highway 21 to its junction with Coyote Creek; thence southeast along Coyote Creek to its junction with the Mora River; thence westerly along the Mora River to its junction with State Highway 161; thence north and west along State Highway 161 to its intersection with State Highway 3 and north on State Highway 3 to its junction with State Highway 21.

4. Artesia State Waterfowl Management Area.

5. McAllister and Salt Lake State Game Refuges.

6. The designated portions of Bitter Lake and Las Vegas National Wildlife Refuges, and the Santa Fe Spillway Basin Marsh.

*North Dakota*

1. Nelson, Ramsey and Towner Counties.

*Oklahoma*

1. Nowata County.

2. U.S. Highway 77 from the Kansas border south to U.S. Highway 177, U.S. Highway 177 south to State Highway 15, State Highway 15, east to State Highway 18, State Highway 18 south to U.S. Highway 64, U.S. Highway 64 east to State Highway 99, State Highway 99 south to State Highway 51, State Highway 51 east to State Highway 97, State Highway 97, north to its junction with unnamed county roadway, northwestwardly on the county roadway to its junction with State Highway 20, State Highway 20 west to State Highway 18, State Highway 18 north to the Kansas border.

3. Interstate 40 from the Arkansas border west to State Highway 82, State Highway 82 north to State Highway 100, State Highway 100 west to State Highway 10A, State Highway 10A west to State Highway 10, State Highway 10 north to State Highway 80, State Highway 80 north to State Highway 251A, State Highway 251A southwest to Muskogee Turnpike, Muskogee Turnpike south to Interstate 40, Interstate 40 west to U.S. Highway 69, U.S. Highway 69 north to U.S. Highway 266, U.S. Highway 266 west to U.S. Highway 62, U.S. Highway 62 south to Indian Nation Turnpike, Indian Nation Turnpike south to U.S. Highway 270, U.S. Highway 270 east to State Highway 2, State Highway 2 north to State Highway 31, State Highway 31 west to State Highway 71, State Highway 71 north to State Highway 9, State Highway 9 to State Highway 9A, and State Highway 9A north and east to the Arkansas border.

4. State Highway 78 from the Texas border north and west to U.S. Highway 75, U.S. Highway 75 north to State Highway 78, State Highway 78 west to State Highway 22, State Highway 22 north and west to its junction with State Highway 12 at Ravia south and west on State Highway 12 to State Highway 199 to State Highway 99C near Oakland, south and west on State Highway 99C and State Highway 32 to the junction of Interstate

Highway 35 near Marietta, south down Interstate Highway 35 to the Texas border.

5. Washita National Wildlife Refuge.

*South Dakota*

1. Kingsbury and Washabaugh Counties.

2. That portion of Hughes County lying west and north of U.S. Highway 83, and lying south of U.S. Highway 14.

3. That portion of Stanley County lying east and north of the Lower Brule-Antelope Creek Road from the Lyman-Stanley County line to Fort Pierre, and that portion of Stanley County lying north of State Highway 34 for approximately five miles west of Fort Pierre and east of Stanley County Federal-Aid Secondary Highway 6193 and State Highway 1806 to Minneconjou Bay.

4. On or within 100 yards of the water's edge of Lake Andes in Charles Mix County.

5. Those portions of Bon Homme, Charles Mix and Gregory Counties lying on or within 100 yards of the water's edge of the Missouri River, from Fort Randall Dam downstream to the Bon Homme-Yankton County line.

6. Those portions of Potter and Sully Counties lying west of State Highway 83; that portion of Hyde County lying south of U.S. Highway 14 and west of Hyde County Federal-Aid Secondary Highway 6547 (commonly called the Holabird Grade) and that portion of Hyde County lying south of U.S. Highway 34 and west of State Highway 47; that portion of Buffalo county lying west of State Highway 47; that portion of Lyman County lying east and north of the Lower Brule-Antelope Creek Road from State Highway 47 to the Lyman-Stanley County line.

7. Those portions of Clay, Union and Yankton Counties lying on or within 100 yards of the water's edge of the Missouri River, from the Bon Homme-Yankton County line downstream to the Iowa border, including Lake Yankton and all islands and bars.

8. On or within 100 yards of Grupe Slough State Game Bird Refuge in Marshall County.

*Texas*

1. Those portions of Colorado, Harris, Jefferson and Waller Counties north of IH–10.

2. Neuces County, that portion west of U.S. Highway 77.

3. That area lying within boundaries beginning at the Louisiana State line, thence westward along IH 10 to the junction of U.S. Highway 90 and IH 10 in Beaumont, thence westward along U.S. 90 to its junction with IH 610 in Houston, thence north and west along IH 610 to its junction with U.S. Highway 290 in Houston, thence westward along U.S. Highway 290 to its junction with State Highway 159 in Hempstead, thence southwestward along State Highway 159 to its junction with State Highway 36 in Bellville, thence eastward along State Highway 36 to its junction with Farm-to-Market (FM) 2429, thence southward along FM 2429 to its junction with FM 949, thence southwestward along FM 949 to its junction with IH 10, thence westward along IH 10 to its junction with U.S. Highway 77 at Schulenburg, thence southward along U.S. Highway 77 to its junction with the U.S.-Mexico international boundary at Brownsville, thence eastward along the U.S.-Mexico international boundary to the Gulf of Mexico, thence east and seaward to the three marine league limit, thence northeastward along the three marine league limit to the Louisiana State line, thence northward along the Texas-Louisiana State line to its junction with IH 10.

4. The portions of Grayson, Fannin and Cooke Counties lying within boundaries beginning at the Oklahoma State line, thence southward along I–35 to its junction with U.S. Highway 82 at Gainesville, thence eastward along U.S. Highway 82 to its junction with U.S. Highway 78 at Bonham, thence northward along State Highway 78 to its junction with the Oklahoma State line, thence westward along the Oklahoma-Texas State line to its junction with I–35.

5. The portions of Upshur, Cass, Harrison, Morris and Marion Counties lying within boundaries beginning at the Louisiana State line, thence westward along State Highway 49 to its junction with U.S. Highway 259 at Daingerfield, thence southward along U.S. Highway 259 to its junction with State Highway 450 at Ore City, thence eastward on State Highway 450 to its junction with State Highway 154 at Harleton, thence southeastward along State Highway 154 to its junction with U.S. Highway 80 at Marshall, thence eastward along U.S. Highway 80 to its junction with State Highway 43, thence northeastern along State Highway 43 to its junction with FM 2682 at Karnack, thence eastward along FM 2682 to its junction with FM 134, thence southward along FM 134 to its junction with FM 1999 at Leigh, thence eastward along FM 1999 to its junction with the Louisiana State line, thence northward along the Louisiana-Texas border to its junction with State Highway 49.

6. The portions of Henderson, Kaufman and Anderson Counties lying with the boundaries beginning at the junction of State Highway 31 and FM 2661, thence westwardly along State Highway 31 to its junction with U.S. Highway 175 at Athens, thence northwestward along U.S. Highway 175 to its junction with FM 90, thence northward along FM 90 to its junction with FM 1391, thence westward along FM 1391 to its junction with U.S. Highway 175 at Kemp, thence southward along U.S. Highway 175 to its junction with State Highway 274, thence south along State Highway 274 to its junction with State Highway 31 at Trinidad, thence eastward along State Highway 31 to its junction with FM 3441 at Malakoff, thence southward along FM 3441 to its junction with FM 59 at Cross Roads, thence southward along FM 59 to its junction with U.S. Highway 287 at Cayuga, thence southeastward along U.S. Highway 287 to its junction with FM 860, thence northward along FM 860 to its junction with FM 837, thence northeastward along FM 837 to its junction with U.S. Highway 175 at Frankston, then eastward along U.S. Highway 175 to its junction with FM 855, thence northward along FM 855 to its junction with FM 346, thence northward along FM 346 to its junction with FM 344, thence northward along FM 344 to its junction with FM 2661, thence northward along FM 2661 to its junction with State Highway 31.

*Wyoming*

1. Big Horn County: Along and within one mile either mile either side of the water line of the Big Horn River, Yellowtail Reservoir, Shoshone River, Nowood River and portions of Medicine Lodge Creek and Paintrock Creek where they flow into the Norwood River, beginning from their confluence to where they flow from the mountains.

2. Goshen County:

A. North Platt River/Laramie River—Beginning where U.S. Highway 25 crosses the Wyoming-Nebraska State line; south along said State line to Goshen County Road No. 7–108; west along said road to Wyoming Highway 92, west, then northerly along said highway to U.S. Highway 85; northerly along said highway to Wyoming Highway 156; westerly and northerly along said highway to Goshen County Road No. 7–62; westerly along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–48; southwesterly along said road to the Goshen-Platte County line; north along said line to U.S. Highway 26; southeast along said highway to the point of beginning.

B. Table Mountain—Beginning where Wyoming Highway 92 intersects Wyoming Highway 158; south along said highway to Goshen County Road No. 7–171; west along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–160; east along said road to Goshen County Road No. 7–166; North along said road to Goshen County Road No. 7–114; east along said road to Wyoming Highway 92; east along said highway to the point of beginning.

**Pacific Flyway**

*Arizona*

1. Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary and Mormon Lake.

2. Hope Indian Reservation lands in Coconino and Navajo Counties.

3. Navajo Indian Reservation lands in Apache, Coconino and Navajo Counties.

4. Cibola National Wildlife Refuge.

*California*

1. Butte, Colusa, Contra Costa, Glenn, Imperial, Inyo, Merced, Sacramento, San Bernardino, San Joaquin, Solano, Sutter, Yolo and Yuba Counties.

2. Northeastern Zone. Those portions of Siskiyou, Shasta, Sierra, Tehama and Plumas Counties, and all of Lassen and Modoc Counties, bounded by the following line: Beginning at I–5 at the Oregon border, southerly on I–5 to State Highway 89, thence southeasterly on State Highway 89 to State Highway 70, thence easterly on State Highway 70 to US 395, thence southerly on US 395 to the Nevada border.

3. Grizzly Island Wildlife Management Area in Solano County.

*Colorado*

1. Montrose County.

*Idaho*

1. Benewah, Bonner, Boundary, Gooding and Kootenai Counties.

2. Canyon County, that portion north and east of I–84.

3. Jefferson County, that portion north and/or west of State Highway 33 and I–15.

4. Southeastern Zone. Those portions of Cassia, Power, Bannock, Bonneville, Bingham, Madison, Jefferson and Caribou Counties bounded by the following line: Beginning at Sage Junction (I–15 and State Highway 33), thence southerly on I–15 to State Highway 39, thence southwesterly along State Highway 39 to American Falls Dam and the Union Pacific Railroad track, thence westerly along the Union Pacific track to the Power-Blaine County line, thence southerly along said line and continuing due south through Cassia County to I–86 (approximately at the Raft River Junction), thence easterly along I–86 to the west boundary of the Fort Hall Indian Reservation, thence following the Reservation boundary to include all lands and waters within the Reservation lying south and east of I–86 and US–91 (including all waters of the Blackfoot River bordering the Reservation), thence commencing northeasterly on US–91 at the northern boundary of the Reservation to Idaho Falls, thence northerly on US 20 to Rexburg, thence westerly on State Highway 33 to point of origin.

5. Southwestern Zone. Those portions of Elmore, Ada, Canyon, Payette and Owyhee Counties bounded by the following line: Beginning at the intersection of State Highway 78 and I–84 near Hammett, thence northwesterly along I–84 to the Idaho-Oregon State line, thence southerly along the Idaho-Oregon State line to State Highway 19, thence easterly along State Highway 19 to US–95, thence southerly on US–85 to State Highway 55, thence easterly on State Highway 55 to State Highway 78, thence southeasterly on State Highway 78 to the point of beginning.

*Montana*

1. Flathead, Lake, Lewis, Clark and Sanders Counties.

2. The Confederated Salish and Kootenai Indian Tribal lands on the Flathead Reservation.

3. Benton Lake and Red Rock Lakes National Wildlife Refuges.

*Nevada*

1. Stillwater Wildlife Management Area.

2. Ruby Lake National Wildlife Refuge.

*New Mexico*

1. San Juan County.

*Oregon*

1. Harney, Polk and Yamhill Counties.

2. Columbia County, that portion south and west of US 30.

3. Multnomah County, that portion south of I–84.

4. Southcenteral Zone—All of Klamath County, excluding Davis Lake, and that portion of Lake County lying west of Highway 395.

5. Lower Columbia River Zone—Those portions of Multnomah, Columbia and Clatsop Counties bounded by the following line: Beginning at the Bonneville Dam, westerly on Highway I–84 to Portland, thence northwesterly on US 30 to the Astoria bridge, thence partially across Astoria bridge to the Oregon-Washington State line, thence upriver on the Washington-Oregon State line to point of origin.

6. Malheur County Zone—That portion of Malheur County bounded by a line beginning at I–84 at the Oregon-Idaho State line, thence northwesterly on I–84 to State Highway 201, thence southerly on State Highway 201 to State Highway 19, thence easterly on State Highway 19 to the Oregon-Idaho State line to the point of beginning.

7. Columbia Basin Zone—Those portions of Gilliam, Morrow and Umatilla Counties bounded by the following line: Beginning at the town of Arlington on I–84, thence easterly on I–84 to US–730, thence northeasterly on US–730 to the Oregon-Washington State border, thence westerly along the Columbia River, Oregon-Washington border to point of origin.

8. Ankeny and William L. Finley National Wildlife Refuges.

*Utah*

1. Cache, Davis, Salt Lake, Utah and Weber Counties.

2. That portion of Box Elder County lying east of a line extending from 80N at the Utah-Idaho border, thence southeast on 80N to the junction of the Snowville-Locomotive Springs Road, thence southwest on the Snowville-Locomotive Springs Road to the junction of the Kelton Road, thence west on Kelton Road to the town of Kelton, thence south to the north shore of the Great Salt Lake, thence south along the west shore of the Great Salt Lake to the Box Elder County line.

*Washington*

1. Clark County, that portion north and/or east of State Highway 14 and I–5.

2. Franklin County, that portion east of State Highway 17.

3. Grant County, that portion east and/or south of State Highway 17 and US–2.

4. Skagit County, that portion east of I–5.

5. Southwestern Zone—Those portions of Skamania, Clark, Cowlitz, Wahkiakum, Grays Harbor and Pacific Counties south and west of the following line: Beginning at the Bonneville Dam, westerly on State Highway 14 to Vancouver, thence northerly on I–5 to Kelso, thence westerly on State Highway 4 to US 101, thence northerly on US 101 to Aberdeen, thence westerly on State Highway 109 to Ocean City, thence due west to the Pacific Ocean.

6. Puget Sound Zone—Those portions of Whatcom, Skagit, San Juan, Island, Clallam, Jefferson, Kitsap, Mason, Thurston, Pierce, King and Snohomish Counties bounded by the following line: Beginning at I–5 on the Washington-British Columbia, Canada border, thence west, southerly and westerly along said border to a point due north of Neah Bay, thence due south to Neah Bay, thence easterly on State Highway 112 to US–101, thence easterly and southerly on US–101 to I–5, thence northerly on I–5 to State Highway 538 near Mt. Vernon, thence easterly on State Highway 538 to State Highway 9, thence northerly on State Highway 9 to State Highway 20, thence westerly on State Highway 20 to I–5, thence northerly on I–5 to point of origin.

7. Columbia Basin Zone—Those portions of Benton, Klickitat, Franklin, Adams, Grant, Yakima, Chelan, Kittitas, Douglas, Lincoln, Okanogan and Walla Walla Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo Bridge on US–97, thence northerly on US–97 to State Highway 14, thence easterly on State Highway 14 to US–395/I–82, thence northerly on US–395/I–82 (formerly a continuation of State Highway 14) to Kennewick, thence westerly on State Highway 240, thence northerly on State Highway 240 to State Highway 24, thence westerly on State Highway 24 to US–97, thence northerly on US–97 to State Highway 155 at Omak, thence easterly and southerly on State Highway 155 to State Highway 174 at Grand Coulee, thence southeasterly on State Highway 174 to US–2, thence westerly on US–2 to State Highway 17, thence southerly on State Highway 17 to US–395, thence southerly on US–395 to US–12, thence southerly on US–12 and US–730 to the Oregon border (including the entire McNary National Wildlife Refuge), thence westerly along the Columbia River and the Washington-Oregon border to the point of origin.

Dated: December 11, 1986.

**P. Daniel Smith,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–853 Filed 1–14–87; 8:45 am]

BILLING CODE 4310–55–M

# Notices

Federal Register
Vol. 52, No. 10
Thursday, January 15, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Etolin Island Area Analysis; Stikine Area; Tongass National Forest; Petersburg, Alaska; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) which will refine management direction for the North Etolin Island Management Area S23, (Value Comparison Units #462, 463, 464, 465, 466, 467, 468, 469, and 470) on the Wrangell Ranger District. The analysis documented in the EIS will result in a decision which may amend the Tongass Land Management Plan.

The Tongass Land Management Plan allocated north Etolin Island to Land Use Designations (LUD) III, and IV, providing for a balanced mix of commodity and non-commodity uses. The Area Analysis will result in refined management objectives, standards and guidelines for implementing projects within the area. Portions of the area are presently unroaded.

The analysis will also evaluate resources and use opportunities of the South Etolin Island Management Area S24 (Value Comparison Units #471, 472, 473, and 474). The Tongass Land Management Plan recommended Wilderness designation for the southern portion of the island, but Congress chose not to so designate it. This area is presently managed to maintain its natural condition. Reconsideration of its allocation will be made during revision of the Tongass Land Management Plan. The present analysis of the southern area is being made to ensure that important relationships between the north and south parts of the island are considered when prescribing management direction for the northern part, and to provide better information on the southern part for use in the Tongass Land Management Plan revision.

Previous analysis on Etolin Island has resulted in an Environmental Impact Statement and Record of Decision on timber harvest near Olive Cove under the Pacific Northern Timber long-term contract; Environmental Assessments and Decision Notices on timber harvest near Anita Bay and Quiet Harbor under the Granite and Quiet Timber Sale contracts; and an Environmental Analysis for the proposed Canoe Passage Blowdown Timber Sale.

The area analysis will consider alternative mixes of resource management emphasis for the area appropriate to the Forest Plan land use designations. The total road network needed to meet various resource objectives will be examined as will multi-entry timber harvest unit layouts.

Initial scoping has begun. Federal, state, and local agencies along with other individuals or organizations who have been or may be interested in, or affected by, the decision are invited to participate in the scoping process.

The area analysis will take approximately 4 months. The Draft EIS should be available for public review by April 10, 1988. The Final EIS is scheduled for completion by November 20, 1988.

Robert E. Lynn, Forest Supervisor, Stikine Area, Tongass National Forest, Petersburg, Alaska, is the responsible official.

Written comments and suggestions concerning the area analysis and Environmental Impact Statement should be sent to Keene Kohrt, District Ranger, Wrangell Ranger District, Stikine Area, Tongass National Forest, P.O. Box 51, Wrangell Alaska, 99929 by July 1, 1987.

Questions about the proposed action and EIS should be directed to Dave Rak, IDT leader, Wrangell Ranger District, Stikine Area, Tongass National Forest, phone (907) 874–2323.

Dated: January 5, 1987.

**Robert E. Lynn,**
*Forest Supervisor.*

[FR Doc. 87–883 Filed 1–14–87; 8:45 am]
BILLING CODE 3410–11–M

### National Agricultural Statistics Service

### Definition and Concepts of Prices Received by Farmers for Rice and Cotton

The National Agricultural Statistics Service (NASS) is publishing this notice to explain how loan deficiency payments and first handlers certificates affect the Prices Received By Farmers data series as published by NASS.

The basic NASS definitions and concepts used in that series are consistent with past data series. In that series, the "average price received by farmers" means the total dollars received divided by the quantity of commodity sold at the first point of sale before deducting marketing expenses such as storage or drying. All direct government payments are excluded. The average price reflects returns for all classes and grades of the commodity sold. Quality premiums or discounts are included in the price received. The average price is so defined because the data are used to value crop marketings and estimate cash receipts for farm commodities.

A program using world prices, loan deficiency payments, and first handler certificates was introduced in the Food Security Act of 1985. The program allows loans on rice and cotton to be repaid at levels below face value.

"First handler certificates" are issued to buyers for the difference between the world price and loan repayment rate at the time of the sale under Plan A or Plan B of the Act in effect for the 1986 cotton crop. NASS considers the value of the first handlers certificate a government payment to the marketing sector.

Under "Plan A," as set forth in section 103A(s)(5)(B) of the Agricultural Act of 1949 (Act), as added by section 501 of the Food Security Act of 1985, the value of the difference between the loan repayment rate and loan rate is considered as a direct government payment to the farm production sector.

Generally, buyers must offer some equity above loan repayment rates to encourage producers to sell cotton eligible for loan or to bring cotton out of loan status. The actual returns to a producer would be the loan value less the 4.3 percent reduction imposed by the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) plus equity for eligible

cotton—the same as for past years. But to keep the prices received by farmers comparable with previous years, the difference between loan and loan repayment values would be considered a direct government payment. Thus, the amount transferred from the marketing sector to the farm production sector would be the loan repayment rate plus the equity payment to the producer which is the average price received by farmers for cotton marketed under Plan A.

Under "Plan B," as set forth in section 103A(a)(5)(C)(i) of the Act, as added by Section 501, loan repayment rates are a fixed value or at world price. The difference between the loan value, less the Gramm-Rudman-Hollings reduction, and the loan repayment rate is retained by the producer and is considered as a direct government payment to the farm production sector. Thus, the amount transferred from the marketing sector to the farm production sector would be the fixed repayment rate or world price plus the equity payment to the producer.

In the case of rice, the Act provides for a type of support similar to Plan B for cotton in section 101A(a)(5)(A) of the Act, as added by section 601 of the Food Security Act of 1985. When this Plan B type of support is in effect for rice, the NASS average price received by farmers is loan repayment rate plus equity to the producer which is the actual price at which the buyer purchases the commodity.

Questions on these definitions should be directed to Richard D. Allen, Director, Estimates Division, NASS/USDA, Room 5847–S, Washington, DC 20250; telephone: (202) 447–3896.

Dated: January 9, 1987.

**W.E. Kibler,**

*Administrator.*

[FR Doc. 87–893 Filed 1–14–87; 8:45 am]

BILLING CODE 3410-20-M

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Manufacturers' Shipments, Inventories, and Orders (M3) Supplement; Unfilled Orders Benchmark Survey; Consideration

Notice is hereby given that the Bureau of the Census is planning to conduct a supplement to the monthly Manufacturers' Shipments, Inventories, and Orders survey for 1986, under authority of Title 13, United States Code, sections 182, 224, and 225. The data received from this supplement will provide the information necessary to benchmark the monthly estimates of unfilled orders in manufacturing. Unfilled orders data and the estimates of new orders, which are based partially on the unfilled orders data, are both important indicators of economic activity. These data have significant application to the needs of the public and industry. They are not available from nongovernmental or other governmental sources.

This survey is a supplement to the Manfacturers' Shipments, Inventories, and Orders survey for multiestablishment companies and will request 1986 end-of-year unfilled orders ana annual sales data. The survey will include all multiestablishment companies with $500 million or more in manufacturing shipments, plus a sample of smaller companies classified in industries for which unfilled order records normally are maintained. Unfilled orders data for single establishment companies currently are collected on the annual survey of manufactures Form MA–1000.

A survey taken in December 1985 showed that many companies do not maintain unfilled orders data on an establishment basis. Therefore, the 1986 supplemental survey will be conducted on a company basis and will request either company-wide or division-level data. Multiestablishment companies that are classified in a single industry category as defined in the monthly M3 survey will complete a form that requires only company-wide data. Companies classified in more than one M3 industry category will complete a form that requires unfilled orders and corresponding sales data on a divisional basis.

The resulting unfilled orders data and new orders estimates will be used to revise the levels currently being published for the monthly survey and to improve the accuracy of the published data. The current monthly estimates are based on a small sample and are subject to significant error.

The new survey will be mailed in April 1987. Copies of the proposed forms are available on request to the Director, Bureau of the Census, Washington, DC 20233.

Any suggestions or recommendations concerning this proposed survey will receive consideration if submitted in writing to the Director, Bureau of the Census, on or before 30 days from publication of notice. For additional information you may phone Michael S. McKay, Chief, Organization and Management Systems Division, Bureau of the Census, on (301) 763–7452.

Dated: January 9, 1987.

**John G. Keane,**

*Director, Bureau of the Census.*

[FR Doc. 87–900 Filed 1–14–87; 8:45 am]

BILLING CODE 3510-07-M

## International Trade Administration

### Export Trade Certificate of Review; Receipt of Applications

**ACTION:** Notice of Applications.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received two separate applications for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificates should be issued.

**FOR FURTHER INFORMATION CONTACT:** James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treable damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

#### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the certificates should be issued. An original and five (5) copies should be submitted not later than February 4, 1987 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should specifically reference the application number. Summaries of these applications follow:

Applicant: Safety Equipment Export Trading Company (SEETC), 1901 N. Moore Street, Suite 501, Arlington,

Virginia 22209, Telephone: (703) 525–1695
Application No.: 86–00010
Date Deemed Submitted: December 31, 1986
Members (in addition to applicant): American Allsafe Company, Tonawanda, New York; H. L. Bouton Company, Buzzards Bay, Massachusetts; Durafab Disposables, Inc.; HSC Corporation, Buchanan, Michigan; and Tasco Corporation, East Providence, Rhode Island.

*Summary of the Application:*

A. Export Trade

The Applicant is a Virginia corporation consisting of a group of U.S. safety equipment manufacturers organized for the joint export of their products to foreign markets. SEETC proposes to export the following general categories of safety equipment: clean room apparel, emergency eyewash and shower equipment, eye and face protection, fall protection, head protection, hearing protection, first aid equipment, machinery guards, respiratory protection, safety and health instruments, safety wearing apparel, safety cans and warning devices.

In the conduct of its export activities, SEETC will provide the following export trade services: consulting, international market research, advertising, marketing, sales of goods and services, insurance, product research and design, legal assistance, transportation, trade documentation and freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange, financing, and taking title to goods.

B. Export Markets

The Export Markets include all parts of the world except Canada and the United States (the fifty states of the United States, the Distrit of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

C. Export Trade Activities and Methods of Operation

Each Member of the Applicant will independently provide SEETC with an estimate of what amounts of products it will make available for export through the ETC, with SEETC imposing no minimum export requirement. In the conduct of its export operations, SEETC seeks certification to:

1. Enter into agreements with its Member suppliers to act as an Export Intermediary. These agreements may include any of the following provisions:

a. SEETC agrees to purchase products from its Member suppliers and, when necessary to complete product line requests, from non-Member suppliers. All products purchased by SEETC from its Member and non-Member suppliers will be for resale by SEETC in the Export Markets. SEETC will market and sell the products, either directly or through Export Intermediaries other than SEETC, to such purchasers, at such prices, and on such terms as SEETC shall determine; and/or

b. No Member supplier will be restricted from exporting products independently of SEETC. However, should any Member supplier cease to be a Member of SEETC, that Member supplier may be prohibited from selling products to purchasers that were SEETC customers to which the member supplier previously sold products for a period of two years following their resignation.

2. Detemine the price of products sold to SEETC by Member suppliers.

3. Enter into exclusive or nonexclusive agreements with other Export Intermediaries for the sale of products in the Export Markets.

4. Exchange information with Member suppliers regarding:

a. The prices that SEETC has charged or will charge in the Export Markets for each Member supplier's products;

b. The quality and quantity of products available from Member suppliers for export, delivery dates, terms of sale, and other information necessary to arrange and complete export sales of the products;

c. General economic or business conditions in the Export Markets, including supply and demand conditions, prices and terms of sale in the Export Markets, and transportation and other costs incurred in exporting to the Export Markets;

d. SEETC's sales results in the Export Markets, including orders shipped, costs of doing business, and other information relating to SEETC's business in the Export Markets;

e. Amounts and prices of products purchased from each Member supplier for export, and the terms and conditions under which such purchases were made;

f. Matters concerning SEETC's organization, governance, financial condition, and membership;

g. Market strategies for the Export Markets, and other issues relating to sales and export trade facilitation services in the Export Markets and SEETC's export business; and/or

h. Information about U.S. and foreign legislation and regulations, including Federal programs affecting export sales.

5. Participate in meetings with one or more Member suppliers to deliver and discuss the information described in paragraph (4) above.

6. Enter into agreements with customers to sell products in the Export Markets only to such customers, and/or such customers may agree not to purchase the products from any competitor of SEETC.

7. Prescribe conditions of membership to, and termination from SEETC, including:

a. Each Member shall have the right to resign membership from SEETC by giving 180 days' prior written notice to the remaining Members. The remaining Members shall then have the option to terminate SEETC or pay the remaining Member the value of its stock, as adjusted, on the date of its withdrawal. The withdrawing Member shall remain responsible for commitments made by such Member and SEETC on behalf of such Member prior to the effective date of such Member's withdrawal;

b. Any Member of SEETC may be removed by a majority vote of the Board of Directors, with prior notice of the vote given to the Member. Removal shall be for due cause, including, but not limited to, violation of SEETC's Bylaws, loss of credit-worthiness, and violation of Agreements entered by and between Members; and

c. SEETC shall have the right to admit additional manufacturers of safety equipment from time to time upon:

(i) Receiving a majority vote of SEETC's Board of Directors, and

(ii) Making such capital contribution in the purchase of common shares of stock and paying a fee to cover initial start-up costs, including attorneys' fees incurred by SEETC's Members, as are determined in good faith by SEETC's Board of Directors.

Applicant: Millers' National Federation (MNF), 600 Maryland Avenue, S.W., Suite 305W, Washington, DC 20024, Telephone: (202) 484–2200
Application No.: 86–00011
Date Deemed Submitted: December 31, 1986
Members (in addition to applicant): Roy M. Henwood, President, MNF; Paul B. Green, Consultant, MNF; and members of the Foreign Agricultural Policy Committee of MNF to the extent that they represent the Federation as members of the committee (Phillip N. Strongin, Cereal Food Processors, Inc.; James C. Brainard, ADM Milling Company; John Diamond, Bartlett Milling Company; Jon Jacobson, ConAgra/Peavey; William J. O'Meara, International Multifoods Corporation; Robert Schreck, The Pillsbury

Company; and Pat Thiessen, Cargill, Inc.).

*Summary of the Application:*

A. Export Trade

The Applicant is an Illinois corporation that acts as a trade association representing companies in the U.S. wheat flour milling industry. MNF and its Members intend to provide a wide array of export services to aid the export of certain milled products obtained from its various suppliers.

The Applicant proposes to export the following goods: U.S. origin wheat flour, durum semolina, semolina-farina, and other products or byproducts of the milling of U.S. wheat and/or durum. In the conduct of its export activities, MNF will provide the following export trade services: international market research, product identification, foreign buyer import tender standardization, and determination of the portion of the U.S. commercial price which will be paid by the overseas buyer under the Export Enhancement Program (GSM 505) of the Foreign Agricultural Service of the U.S. Department of Agriculture (USDA).

B. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

C. Export Trade Activities and Methods of Operation

MNF and its Members seek certification to:

1. Enter into discussions and negotiations with foreign buyers eligible under the Export Enhancement Program (GSM 505) of the USDA concerning:

a. Standardized production specifications, quantities, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreign buyer,

b. Standardized tender terms of a world or U.S.-origin tender for wheat flour semolina or wheat products in a manner which will allow U.S. flour millers to effectively compete for participation, and

c. Negotiation of the highest possible portion of the U.S. export prices to be paid by the buyer and to be presented as a bid from the foreign buyer.

2. Disseminate information to the USDA and between the certified Members about foreign origin competitors' price levels, foreign subsidy levels, foreign competitors' credit programs, product specifications and travel plans for the purpose of establishing the competitive world transaction price level for a specific commodity and destination. Such information will be gathered from Federation members and discussed in the course of foreign buyer negotiations by the certified Members representing the Federation.

3. Carry out foreign market development trips to define additional export markets which may fit the criteria for GSM 505 and make export and foreign competitor information gathered on those trips available to the USDA and to Federation members.

Date: January 9, 1987.

**James V. Lacy,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-927 Filed 1-14-87; 8:45 am]

BILLING CODE 3510-25-M

## Applications For Duty-Free Entry of Scientific Instruments; University of California et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-063. Applicant: University of California, Purchasing Department, 2405 Bowditch Street, Berkeley, CA 94720. Instrument: Filter Photometer (Dual Wavelength), Model ZFP-22. Manufacturer: Sigma Instrumente, West Germany. Intended use: The instrument is intended to be used in biological experiments conducted to (i) identify the enzymes that limit photosynthesis and respiration; (ii) develop methods for their purification; (iii) characterize the enzymes and associated regulatory proteins, which also must be identified and purified and (iv) study the interaction of the regulatory proteins and target enzymes. Application Received by Commissioner of Customs: December 3, 1986.

Docket Number: 87-064. Applicant: Smithsonian Institution, Conservation Analytical Laboratory (MSC), 10th & Constitution Avenue, N.W., Washington, DC 20560. Instrument: Scanning Electron Microscope, Model JSM-840 with Accessories. Manufacturer: JEOL USA Inc., Japan. Intended Use: The instrument is intended to be used for studies of a wide range of stone, metals, ceramics, glasses, textile and paper fibers and pigments for paintings and drawings. The nature of the experiments to be conducted include: identification and characterization of materials; reconstruction of technological variables, such as methods of manufacture, raw materials and sequence of processing; and determination of the mechanisms of deterioration of artifacts. In addition, the instrument will be used for educational purposes in the course "Metallurgy for Conservators" which includes instruction in the characterization and corrosion of metals. Application Received by Commissioner of Customs: December 3, 1986.

Docket Number: 87-065. Applicant: University of California, Lawrence Berkeley, Laboratory, Department of Energy, 1 Cyclotron Road, Building 69, Berkeley, CA 94720. Instrument: Cell Analyzer, Model DMIPS. Manufacturer: British Columbia Cancer Research Institute, Canada. Intended Use: The instrument is intended to be used for a variety of biological investigations which include use in conjunction with the sandwich system, an in vitro tumor analog, to study:

(1) the development of a tumor and its response to radiation therapy,

(2) questions of reoxygenation and repopulation,

(3) the process of repopulation in situ by monitoring the mitotic index of cells in hypoxic regions of sandwiches at the time of and following irradiation and

(4) identification and recording of the fraction of mitotic cells in both the hypoxic and oxic regions at the time of irradiation.

Application Received by Commissioner of Customs: December 3, 1986.

Docket Number: 87-066. Applicant: Fisk University, 1000—17th Avenue, North, Nashville, TN 37203. Instrument: FTI Spectrophotometer, Model DA3.16. Manufacturer: Bomem, Canada. Intended Use: The instrument is intended to be used for a wide range of studies including: (1) infrared and far infrared spectroscopy of ferroelectric

crystals, insulators and semiconductors; (2) absorption-desorption of vapors on metals and glasses; (3) vibrational determination of structures of crystals with tunneling atoms. Other uses will include analysis of microsamples and water containing substances and studies of trace impurities of $HgI_2$. Application Received by Commissioner of Customs: December 3, 1986.

Docket Number: 87–067. Applicant: Thomas Jefferson University, Jefferson Alumni Hall, 1020 Locust Street, Room 268, Philadelphia, PA 19107. Instrument: Electron Microscope, Model H–7000 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: The instrument will be used for biomedical research to ascertain the distribution of extracellular matrix components, their changes and role in the disease processes. Diseases that are being studied include: liver cirrhosis, pulmonary fibrosis and renal glomerulonephritis. Other planned experiments include: rotary shadowing of biological molecules with heavy metals, the study of cell surface receptors in embryonic and neoplastic cells and the study of membranes by freeze-etching. Application Received by Commissioner of Customs: December 8, 1986.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–914 Filed 1–14–87; 8:45 am]

BILLING CODE 3510–DS–M

---

## Decision on Application for Duty-Free Entry of Scientific Instrument; The University of South Carolina

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 87–009. Applicant: The University of South Carolina, Columbia, SC 29208. Instrument: Electron Microprobe, Model CAMEBAX SX 50. Manufacturer: Cameca, France. Intended use: See notice at 51 FR 40244.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides x-ray analysis of surfaces with a resolution of 0.7 microns and a secondary electron image resolution of 5.0 nanometers. This capability is pertinent to the applicant's intended purposes. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–912 Filed 1–14–87; 8:45 am]

BILLING CODE 3510–DS–M

---

## Withdrawal of Application for Duty-Free Entry of Scientific Instruments; Illinois Environmental Protection Agency

The Illinois Environmental Protection Agency has withdrawn Docket Number 85–152R, an application for duty-free entry of a conductivity meter. We have discontinued processing in accordance with § 301.5(g) of 15 CFR Part 301.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–913 Filed 1–14–87; 8:45 am]

BILLING CODE 3510–DS–M

---

[C–508–601]

## Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods From Israel

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of oil country tubular goods (OCTG). The estimated net subsidy is 11.86 percent *ad valorem*. We also determine that critical circumstances do not exist.

We have notified the U.S. International Trade Commission (ITC) of our determination. Therefore, if the ITC determines that imports of OCTG materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume the suspension of liquidation of OCTG from Israel and to require a cash deposit on entries or withdrawals from warehouse for consumption in an amount equal to the estimated net subsidy.

**EFFECTIVE DATE:** January 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Loc Nguyen, Jessica Wasserman or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–0167, 377–1442 or 377–0161.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of OCTG. For purposes of this investigation, the following programs are found to confer subsidies:

A. The Encouragement of Capital Investments Law
   1. Investment Grants
   2. Long-Term Industrial Development Loans
B. Bank of Israel Export Loans
   1. Export Production Fund
   2. Export Shipments Fund
   3. Imports-for-Exports Fund
C. Exchange Rate Rish Insurance Scheme

We determine the estimated net subsidy to be 11.86 percent *ad valorem* for all manufacturers, producers, or exporters in Israel of OCTG.

### Case History

On March 12, 1986, we received a petition in proper form from Lone Star Steel Company and CF&I Steel Corporation, on behalf of the U.S. industry producing OCTG. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Israel of OCTG, directly or indirectly, receive subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 1, 1986, we initiated such an investigation (51 FR 11965, April 8, 1986).

Since Israel is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On May 7, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Israel of OCTG.

We presented questionnaires concerning the petitioners' allegations to the government of Israel and Middle East Tube Co., Ltd. ("METCO"), the only

manufacturer, producer, or exporter in Israel of OCTG, in Washington, DC, on April 11, 1986. Response to our questionnaires were received on May 16 and 21, 1986. Additional information was received over the course of the investigation. We issued our preliminary affirmative countervailing duty determination on June 5, 1986 (51 FR 21201, June 11, 1986).

From June 20 through July 4, 1986, we verified the information submitted in response to our questionnaires. At the request of respondents, we held a hearing on October 14, 1986. We received pre-hearing briefs on September 10, 1986, and post-hearing briefs on October 28, 1986.

**Scope of Investigation**

The products covered by this investigation are "oil country tubular goods," which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States Annotated (TSUSA)* under item numbers:

610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.5243, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5244, 610.5234, 610.5240, 610.5242

The scope of this investigation includes OCTG in both finished and unfinished condition.

For purposes of its preliminary determination, the ITC ruled that drill pipe is a separate "like product" from other types of OCTG. Since the petitioners neither manufacture, produce, or wholesale drill pipe, they are not "interested parties" with respect to drill pipe, within the meaning of section 771(9)(C) of the Act. Therefore, we did not investigate sales of drill pipe in this investigation.

**Analysis of Programs**

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Contervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaries submitted by the government of Israel and METCO, our verification, and comments submitted by petitioners and respondents, we determine the following:

*I. Programs Determined to Confer Subsidies*

We determine that subsidies are being provided to manufacturers, producers, or exporters in Israel of OCTG under the following programs:

A. The Encouragement of Capital Investments Law (ECIL)

The purpose of the ECIL is to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, long-term industrial development laons, accelerated depreciation, and reduced tax rates, the applicant must obtain approved enterprise status. Approved enterprise status is obtained after review of information submitted to the Israel Ministry of Industry and Trade, Investment Center Division. The amount of the benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL, Israel is divided into three development zones, each with a different funding level.

1. *Investment Grants.* In order to receive a grant under the ECIL, an applicant must obtain "approved enterprise" status and obtain an economic viability evaluation of the proposed investment from the Industrial Development Bank of Israel. METCO received approvals for grants in 1971, 1974, 1975 and 1976. According to the approval documents, these grants were contingent upon increased exports. Therefore, we determine that the grants given to METCO are export subsidies.

In its questionnaire response, METCO claimed that these grants did not benefit the production of OCTG. However, according to the approval documents, all of the pipe for which grants were approved, except galvanized pipe, is suitable for use as OCTG. Although one grant was intended for the production of both black and galvanized pipe, we could not segregate the benefit provided to black pipe from the benefit provided to galvanized pipe. Therefore, we find all of the grants to be countervailable subsidies benefitting METCO's total exports.

To calculate the benefit, we allocated the grants received over 15 years (the average useful life of assets in the steel industry). Usually, to allocate benefits over time we use as our discount rate the firm's weighted cost of capital, which is an average of the company's marginal costs of debt and equity for the year in which the terms of the grant were approved. However, in this case, we are unable to calculate a weighted cost of capital for METCO, because there is no fixed-rate long-term borrowing in Israel. We have, therefore, used a variable discount rate to allocate the grant benefits since this most accurately reflects the benefits to METCO over time.

To calculate the grant allocation amount for 1985, we applied the grant methodology outlined in the Subsidies Appendix, using as our variable discount rate the national average short-term borrowing rate for new Israeli shekels (NIS) in 1985 as published in the Bank of Israel annual report adjusted for inflation. Dividing by the value of total exports during the review period, we calculated an estimated net subsidy of 0.002 percent *ad valorem*.

2. *Long-Term Industrial Development Loans.* Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the government of Israel. At verification, we learned that METCO received long-term industrial development loans between 1966 and July 1985. Industrial development loans were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks associated with each commercial bank in Israel.

The government of Israel did not provide us with sufficient information concerning selection criteria for approved enterprises under ECIL or the criteria for receiving industrial development loans under ECIL. Nor did it provide us with information on the distribution of loans under this program. Because we have no information in the approval process or actual distribution of these loans, we have determined that the loans are limited to a specific enterprise or industry or group of enterprises or industries.

Loans under this program are linked to the consumer price index (CPI) or to the U.S. dollar. Therefore, we are treating them as variable rate loans, and have used as our benchmark a short-term interest rate in the review period. For loans on which interest is linked to the CPI, we used a NIS benchmark and

for loans on which interest is linked to the dollar exchange rate, we used a dollar-linked NIS benchmark. We compared the benchmarks to the interest rate charged on each loan and determined that some of the loans were provided on terms inconsistent with commercial considerations. Therefore, we determine those loans to be countervailable. To calculate the benefit from these loans, we applied our short-term loan methodology. Dividing the amount of interest savings in 1985 by the value of total sales during the review period, we calculated an estimated net subsidy of 5.019 percent *ad valorem*.

B. Bank of Israel Export Loans

The government of Israel provides preferential financing to manufacturers, producers, or exporters in Israel of OCTG through three export credit funds adminstered by the Bank of Israel (BOI).

1. *Export Production Fund (EPF).* Under the EPF, three-month loans are provided to exporters to finance export production. The amount which a company is able to borrow under this program is limited by a quota set by the BOI. The quota is based on the value of the company's exports, the product's value-added percentage, and the production cycle of the company. During the review period, EPF financing was provided both in dollar-linked NIS loans and in NIS loans. In July 1985, the BOI discontinued EPF financing in NIS.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. METCO received both NIS loans and dollar-linked loans under this program. For NIS loans we used as our benchmark a nominal rate based on the national average non-directed short-term NIS lending rate published in the 1985 BOI annual report. For loans, we used as our benchmark a nominal rate based on the national average non-directed short-term dollar-linked NIS lending rate as provided in the 1985 BOI annual report. Comparing these benchmarks to the interest rates charged on these loans, we determine that the loans were provided at a preferential rate, and are, therefore, countervailable.

To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period, because METCO did not segregate loans provided on OCTG exports from loans for other products. On this basis, we calculated an estimated net subsidy of 2.777 percent *ad valorem*.

2. *Export Shipment Fund (ESF).* Under the ESF, loans are provided to exporters to enable them to extend credit in foreign currency to their overseas customers. Financing is granted on a shipment-by-shipment basis. Funding is provided after shipment of the goods and must be repaid within six months. Because only exporters are eligible for these loans, we determined that they are countervailable to the extent that they are provided at preferential rates. METCO received dollar loans under the ESF. Dollar loans are not otherwise available in Israel, and we were not able to obtain benchmark interest rates for these loans from independent sources. We have relied on our earlier determination on *Potassium Chloride from Israel: Final Affirmative Countervailing Duty Determination* (Potash) (49 FR 36122, September 14, 1984), in deriving our benchmark. We have determined this rate to be the London Interbank Offering Rate (LIBOR) plus two percent.

Comparing the benchmark interest rate to the rates charged on these loans, we determine that some of the loans were provided at perferential rates and are countervailable. To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period because METCO did not segregate loans provided on OCTG exports from loans for other product. On this basis, we calculated an estimated net subsidy of 0.002 percent *ad valorem*.

3. *Imports-for-Exports Fund (IEF).* Under the IEF, exporters receive loans with a three-month term in order to finance imported materials used for export production. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. Since loans under the IEF are dollar-linked NIS loans, we used as our benchmark a nominal rate based on the national average non-directed short-term dollar-linked NIS lending rate as provided in the 1985 BOI annual report. Comparing the benchmark interest rate to the rates charged on these loans, we determine that the loans were provided at preferential rates and are countervailable.

To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period because METCO did not segregate loans provided on OCTG exports from loans for other products. On this basis, we calculated an estimated net subsidy of 1.163 percent *ad valorem*.

C. Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses resulting from decreased payments in foreign currency receivables due to lags in the rate of devaluation of the NIS. The EIS insures the exporter's revenue (in domestic currency) against unexpected fluctuations between exchange rates and domestic inflation. The scheme is intended to protect exporters when the rate of inflation exceeds the rate of devaluation and the NIS value of an exporter's foreign currency receivables does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is paid on the basis of the value-added of the exports, and this rate is the same for all industries.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. In *Potash*, we stated that we had insufficient data at that time to determine that the premiums and other charges were mainifestly inadequate to cover the program's long-term operating costs and losses. We noted, however, that we were not making a conclusive determination on the program's countervailability at that time.

In this case, the data show that EIS operated at a loss from 1981 through 1985. We believe that five years is, in this case, a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. We, therefore, determine that this program confers a countervailable benefit on manufacturers, producers, or exporters in Israel of OCTG.

We calculated the benefit to METCO from this program by subtracting from the amount of compensation METCO received from IFTRIC during the review period the premiums paid and compensatory payments made in that

year. We allocated this amount over METCO's total exports during the review period to find an estimated net subsidy of 2.895 percent *ad valorem.*

*II. Programs Determined Not to be Used*

We determine that the following programs have not been used by manufacturers, producers, or exporters in Israel of OCTG during the review period.

A. Encouragement of Industrial Research and Development Law (EIRD)

Petitioners allege that manufacturers, producers, or exporters in Israel of OCTG may benefit from research and development grants equal to 50 percent of approved project costs where such activity is directed at export expansion. We verfied that METCO was not eligible for nor did it apply for or receive grants under the EIRD.

B. Labor Training Grants

Petitioners allege that manufacturers, producers, or exporters in Israel of OCTG may receive benefits in the form of labor training funded by the Ministry of Labor. We verified that METCO did not apply for or receive benefits under this program.

C. BOI Special Export Financing Loans

Petitioners allege that manufacturers, producers, or exporters in Israel of OCTG may receive benefits from special export financing loans administered by the BOI. We verified that METCO did not apply for or receive benefits under this program.

D. ECIL Preferential Accelerated Depreciation

Under section 42 of the ECIL, a company which has obtained approved enterprise status can choose to depreciate machinery and equipment at double the normal rate and buildings at four times the normal rate. At verification, we learned that METCO did not apply for or receive benefits under Section 42 of the ECIL in the year covered by the tax return filed during the review period.

E. Other ECIL Tax Benefits

Under section 47 of the ECIL, a company which has obtained approved enterprise status is eligible for a reduced corporate and income tax rate. At verification, we learned that METCO did not apply for or receive benefits under section 47 of the ECIL in the year covered by the tax return filed during the review period.

Under section 46 of the ECIL, dividends and interest paid to foreign investors are taxed at a maximum rate of twenty-five percent. Since METCO is not a foreign investor, this provision of the ECIL is not applicable to METCO.

F. ECIL Loans

Petitioners allege that manufacturers, producers or exporters in Israel of OCTG may receive loans on preferential terms under section 24 of the ECIL for the enlargement of facilities. At verification, we learned that loans under section 24 are only granted to foreign investors in Israeli companies. We verified that METCO received no loans under this program.

G. Drawback Grants

Section 40E of the ECIL provides that the owner of an approved enterprise is entitled to a drawback grant with respect to taxes on investment and investment expenditures. We verified that METCO did not receive any grants under this section. We also verified that the program was terminated on April 1, 1986.

H. ECIL Interest Subsidy Payments

Petitioners allege that manufacturers, producers or exporters in Israel of OCTG may receive grants provided by the government of Israel for the rebate of interest on loans provided by commercial banks. The amount of the grants varies according to the development zone in which the enterprise is located. We verified that METCO did not use this program and that the program was terminated in April 1985.

I. The Encouragement of Industry Law (EIL)

Petitioners allege that manufacturers, producers or exporters in Israel of OCTG may receive benefits under the EIL. Benefits are available to every company located in Israel which derives at least 90 percent of its gross income in a particular year from industrial or manufacturing activities. Almost every company in Israel is eligible for EIL benefits; there is no application process. A company in Israel wanting to claim EIL benefits files the claim on its income tax form and the Income Tax and Property Department of the Ministry of Finance checks the claim. We verified that METCO did not apply for or receive benefits in the year covered by the tax return filed during the review period.

*III. Program Determined Not to be Confer a Subsidy*

We determined that subsidies are not provided to manufacturers, producers or exporters in Israel of OCTG under the following programs:

*A. Rebate of Shlom-Hagalil Special Levy*

Under this program, a duty is paid on all imported raw materials and imported goods incorporated into an exported product at a rate of two percent. The amount of the rebate provided to each company is based on the percentage of the imported input in the total value of the company's exports. This percentage is determined by the Ministry of Finance for each exporter in Israel on an annual basis. This program provides a nonexcessive rebate of duties paid on imported inputs physically incorporated into the exported product. Hence, we determine that this program is not countervailable.

*IV. Programs Determined To Be Terminated*

We determine that the following programs have been terminated:

*A. Property Tax Exemptions on Buildings and Equipment*

Petitioners allege that manufacturers, producers, or exporters in Israel of OCTG may benefit from tax benefits that allow eligible enterprises a five-year exemption from payment of two-thirds of property taxes on buildings and a ten-year exemption for payment of one-sixth of property taxes on equipment. At verification, we learned that the exemptions have been repealed by Amendment No. 17, ECIL, 5738–1979. Also, property taxes on industrial buildings and equipment were repealed for all taxpayers in Israel on April 1, 1981. Property tax exemptions referred to in section 53 of the ECIL are taxes on apartment buildings in residential areas.

B. Partial Non-Payment of Employers' Tax

Under section 55 of the ECIL, employers in approved industrial enterprises located in development zone A or B may be exempt from either one-half or all of the employers' tax. At verification, we learned that the employers' tax has not been levied on productive sectors of the Israel economy since April 1, 1980.

*Negative Determination of Critical Circumstances*

The petitioners allege that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of OCTG from Israel. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement, and (2) there have been

massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we have considered the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. A review of this information indicates that imports from Israel have not been massive over a relatively short period of time.

Since we have not found massive imports over a relatively short period of time, we do not need to consider whether the alleged subsidies are inconsistent with the Agreement.

**Petitioners' Comments**

*Comment 1:* Petitioners argue that the amount of the benefit to METCO from the EIS program is equal to the difference between the amount of premiums which METCO should have paid and the amount which METCO actually paid during the review period. Petitioners contend that the amount METCO should have paid can be determined by estimating the cost of the EIS program to the government, including administrative expenses and compensatory payments and calculating the premiums necessary to generate sufficient revenue to cover the cost of the program and provide a four percent rate of return.

*DOC Position:* We do not have sufficiently detailed information to measure the costs, other than compensation costs, paid under EIS. Therefore, we have calculated the excess that the company receives in compensation over the premiums paid and compensatory payments made and allocated the benefit to the year of receipt.

*Comment 2:* Petitioners argue that if the Department calculates the benefit from the EIS program as the difference between METCO's compensatory payments and its premiums in 1985, then the Department should calculate the *ad valorem* benefit by dividing the amount of benefit attributable to OCTG exports by the value of METCO's OCTG exports.

*DOC Position:* Respondents were not able to segregate payments attributable to OCTG exports from payments attributable to the export of other products produced by METCO. We, therefore, calculated the *ad valorem* benefit by dividing the total net payments received by METCO in 1985 by its total 1985 exports.

*Comment 3:* Petitioners argue that the appropriate benchmark for BOI short-term export financing denominated in dollars is the Eurodollar rate which would be available to firms with the same financial standing as METCO. Petitioners contend that there is no evidence to indicate that METCO could have obtained such loans, absent government intervention at the LIBOR plus two percent rate used by the Department as a benchmark in its preliminary determination. For short-term financing denominated in NIS, petitioners argue that the appropriate benchmark is the rate on NIS overdraft accounts.

*DOC Position:* In calculating the benefit from Export Cedit Fund loans, we used our short-term loan methodology, as set out in the Subsidies Appendix. For short-term loan benchmarks, the Subsidies Appendix provides that we will use the most appropriate national average commercial method of short-term financing, rather than company-specific experience. For dollar-denominated loans we used as our benchmark the rate available to Israeli companies for dollar borrowing outside of Israel, LIBOR plus two percent, for the reason stated in section I.B.2. For NIS-denominated loans, we used as our benchmark the national-average real interest rate for non-directed short-term NIS loans, as published in the 1985 BOI annual report. We converted this real rate into a nominal rate by using the inflation index. We believe that this rate is a more comparable method of short-term NIS financing than the rate on NIS overdraft accounts. For dollar-linked NIS loans, we used as our benchmark the national-average real rate for non-directed short-term dollar-linked loans and coverted this real rate into a nominal rate by using the inflation index and adjusting for devaluation. We believe that this is the most comparable rate of short-term dollar-linked loans in Israel.

*Comment 4:* Petitioners argue that preferential loans received in 1984 and repaid in 1985, as well as loans received in 1985 and repaid in 1986, must be included in the Department's calculation of a benefit, as long as interest on the loan was paid during the review period.

*DOC Position:* We agree. In accordance with the Subsidies Appendix, when valuing the subsidy from preferential short-term loans, we based our calculations on the interest actually paid during the review period.

*Comment 5:* Petitioners argue that the Department should not adjust the bonding rate for Export Production Fund loans. Petitioners argue that the amount of the quota established for each firm borrowing from the fund was not altered; only the currency in which loans were made was changed. Therefore, petitioners argue, the Department's critieria for program-wide changes have not been met.

*DOC Position:* In general, when there is a program-wide change prior to our preliminary determination, it is the Department's policy to adjust the cash deposit rate to reflect this change. In this case, however, we do not have sufficient information to determine the effect of the change in the denomination of loans on the amounts of benefits provided under this program. Therefore, we have calculated a cash deposit rate based on the benefits provided under this program during the review period.

*Comment 6:* Petitioners argue that there is information in the record which indicates that the Israel Development Bank administers a fund for loans at reduced interest rates to firms adapting their production lines to export markets. Because there is no information on the record which demonstrates that eligibility for ECIL development loans is not based on increased production for export, petitioners contend that the Department must, as best information available, conclude that the ECIL development loans constitute export subsidies.

*DOC Position:* We disagree. There is no verified information in the record indicating that the loans received by METCO were based on increased exports. We have, however, found these loans to be countervailable domestic subsidies, because they are limited to a specific enterprise or group of enterprises and are provided at terms inconsistent with commercial considerations.

*Comment 7:* Petitioners argue that feasibility studies performed by the Industrial Development Bank before approval of all long-term loans are provided free of charge and, therefore, constitute subsidies. They contend that companies frequently conduct feasibility studies before making significant investments and that banks frequently require companies to perform feasibility studies before granting long-term loans. They claim that the value of this subsidy is the cost of obtaining an equivalent study from a private consulting firm.

*DOC Position:* At verification, we found no evidence that the government of Israel pays for the feasibility studies required under this program. Moreover, respondent has submitted evidence showing that the cost of the studies is borne by the company and not by the government. Therefore, we disagree with the contention that METCO

received a subsidy in the form of a feasibility study at no charge.

*Comment 8:* Petitioners argue that long-term development loans are countervailable, despite the fact that it is irrelevant that private banks disburse the financing. They note that Israeli government sets the loan terms and determines which companies and projects are eligible to receive loans and, moreover, that the government is the source of the loan funds.

*DOC Position:* We agree. In this case, the Israeli government is the source of financing and determines the eligibility criteria for receiving these loans. Because these loans are provided on terms inconsistent with commercial considerations to a specific enterprise or industry or group of enterprises or industries, we have determined them to be countervailable. The fact that the loans are administered through private banks does not alter our determination.

**Respondents' Comments**

*Comment 1:* Respondents argue that the EIS operated by IFTRIC is not a countervailable subsidy because the program is structured in accordance with commercial considerations. Respondents argue that EIS is designed to be self-balancing. If the rate of domestic inflation is higher than the rate of devaluation of the NIS against a basket of currencies, IFTRIC compensates the exporter. If devaluation is higher than inflation, however, the exporter is required to compensate IFTRIC.

*DOC Position:* We disagree. The government of Israel owns all of the shares of IFTRIC and acts as a re-insurer to cover IFTRIC's losses up to 150 million U.S. dollars. In general, to determine whether government-controlled export insurance programs confer countervailable benefits, the Department examines whether the insurance premiums and other payments charged are adequate to cover the program's long-term operating costs and losses. This methodology is consistent with paragraph (j) of the Annex to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement On Tariffs and Trade (the Subsidies Code), under which an export subsidy is defined to include:

> the provision by governments (or special institutions controlled by governments) . . . of insurance or guarantee programs against increases in the costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.

EIS operated at a loss in each of the years 1981 through 1985. Despite continuing losses, which have amounted to millions of U.S. dollars each year, EIS has not raised the premium rates charged or increased other charges to its customers. We, therefore, conclude that the premiums and other charges levied by EIS are manifestly inadequate to cover its long-term operating costs and losses.

*Comment 2:* Respondents further argue that the commercial viability of the EIS program cannot fairly be judged on the basis of the clearly aberrational inflation rate Israel has experienced during the period under investigation.

*DOC Position:* We disagree. EIS has operated at a loss for five consecutive years, including the year in which the program was established. It is, therefore, difficult to argue that EIS losses were due only to the extremely high inflation rate during the period of investigation. Moreover, inflation rates in Israel were high prior to the establishment of the EIS program. The losses incurred since 1981, therefore, could not have been due to unexpectedly high inflation rates. We believe that five years of massive and continued losses cannot be overlooked on the grounds that they are the result of an aberration.

*Comment 3:* As further evidence that EIS is operated along commercial lines, respondents argue that participation in the program is optional.

*DOC Position:* In order to be found a subsidy, a program need not be mandatory. Furthermore, although EIS is free to choose not to insure an applicant, METCO is participating and receiving benefits.

*Comment 4:* Respondents argue that evidence EIS is operated along commercial lines can be found in the fact that participants in the program were required to make payments to IFTRIC in July 1985.

*DOC Position:* We disagree. Although the exporters did make a compensatory payment to IFTRIC in one month, during the remaining 59 months, EIS paid those who were insured. In this case, the theoretical operation of the program is not dispositive. The fact that EIS did not collect sufficient premiums to cover its costs and losses during this period leads us to conclude that EIS confers a subsidy.

*Comment 5:* Respondents argue that the EIS program is designed to ensure that exporters receive a fixed payment in real terms. In this respect, it is similar to a forward exchagne system. Respondents argue that, since the EIS program does not provide an exporter with a higher payment in real terms than the amount for which it initially contracted, the program does not provide a subsidy.

*DOC Position:* We disagree. We believe that the EIS program does provide a benefit. Exporters who do not participate in the EIS program must absorb the losses that result when the rate of inflation in Israel exceeds the rate of devaluation of the NIS. Forward exchange systems, unlike the EIS program, do not ensure against losses. Instead, they offer the seller the option of knowing with certainty what his domstic currency return will be on foreign sales.

*Comment 6:* Respondents argue that two grants which were made to METCO's Ramla plant were provided for a line which was not producing OCTG at the time the grants were received. This line was not used for the production of OCTG until 1980, many years after the grants were received. Therefore, respondents argue, the grants do not confer a countervailable benefit on the production of OCTG.

*DOC Position:* We disagree. While the grant may have been intended originally to benefit the production of other products, the benefits are clearly no longer tied to those other products. Therefore, we have allocated the benefits over all products, including OCTG.

*Comment 7:* Respondents argue that, contrary to petitioners' assertion, the circumstances of this case and those of *British Steel Corp.* v. *United States*, 6 ITRD 1929 (Court of International Trade, March 8, 1985) are distinguishable. In *British Steel*, government funds used to close inefficient parts of a production facility were countervailable subsidies because the funds enhanced the efficiency of the production of the goods under investigation. In the present case, the ECIL investment grants did not enhance the efficiency of the production of OCTG. The grants, therefore, did not confer a countervailable benefit on OCTG production.

*DOC Position:* We disagree. In *British Steel*, an equity purchase by the government was found to benefit the product under investigation because the equity infusion was used to enhance the overall efficiency of the company. In this case, the grants at issue were "tied" to (*i.e.*, bestowed expressly to purcahse) specific capital assets. We determined that these assets were suitable for the production of OCTG and, at verification, respondents were unable to demonstrate conclusively otherwise. We, therefore, concluded that the grants conferred a benefit on the production of OCTG.

*Comment 8:* Respondents argue that short-term export financing has been provided by commercial banks since July 1985, and that since this time, no Israeli government money has been distributed through any of the short-term financing programs under investigation.

*DOC Position:* According to the government's questionnaire response, as of July 1985, all export financing provided by the BOI was at an interest rate not to exceed LIBOR plus two percent. The government of Israel sets loan quotas for each exporter, as well as maximum interest rates. Financing required by government action, even if the government is not the source of funds, can provide a subsidy. The Department has rejected the view that a subsidy must involve a charge to the public account and has imposed countervailing duties where the benefit was conferred by one firm on another at the direction of the government (*e.g.*, banks required to give preferential financing to exporters). *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Spain* (47 FR 51938, November 15, 1982); *Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod From Spain* (49 FR 19551, may 8, 1984).

*Comment 9:* Respondents argue that, whether the export loans are dollar loans or dollar-linked NIS loans, a dollar-denominated benchmark must be used. Since there are no other sources of dollar financing in Israel and since, in the absence of this program, METCO would have been forced to seek comparable dollar loans abroad, the Department in its preliminary determination correctly used as a benchmark the interest rate METCO would have had to pay for a dollar loan on the Euro market.

*DOC Position:* See section I.B.2 of this notice.

*Comment 10:* Respondents argue that in setting the duty deposit rate, the Department should not include benefits from NIS-denominated loans made prior to July 1985 under the EPF. Respondents noted that NIS loans are no longer available under the EPF, and that, therefore, the estimated subsidy should be reduced.

*DOC Position:* We disagree. See DOC position on petitioners' comment 5.

*Comment 11:* Respondents argue that long-term deelopment loans are not countervailable because they are currently offered exclusively by private commercial banks, and the Israeli government's only role is to raise, through bond offerings, money it lends to commercial banks. Furthermore, respondents argue that the loans are not limited to a specific industry.

*DOC Position:* We disagree. At the time METCO's loans were received, the loans were offered by the Industrial Development Bank of Israel, not private commercial banks. As described in section I.A.2., *supra*, eligibility for these loans is limited to companies designated by the Israeli government as "approved enterprises."

*Comment 12:* Respondents argue that, although the rates paid on development loans varied according to the region of the country in which the project in question was located, METCO paid the highest regional rate on all of its loans. Therefore, these loans conferred no benefit on METCO.

*DOC Position:* We disagree. We have determined that development loans are available only to a limited group of enterprises or industries, because they are provided only to "approved enterprises" and because the Israeli government did not demonstrate that these designated firms comprise more than a specific group of enterprises or industries. The benefit to METCO is equal to the difference between the interest paid by METCO on its loans and the interest which would be paid on comparable commercial loans.

*Comment 13:* Respondents argue that if the Department does find long-term development loans to be countervailable, the benchmark rate should be the rate the Israeli government pays on government bonds since the bond rate is the best measure of the cost of borrowing in Israel.

*DOC Position:* We disagree. The relevant consideration in determining our benchmark is alternative commercial sources of financing, not the government cost of borowing.

**Suspension of Liquidation**

In accordance with section 705(d) of the Act, if the ITC determines that imports of OCTG materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume the suspension of liquidation of OCTG from Israel and to require a cash deposit on entries or withdrawals from warehouse for consumption in an amount equal to 11.86 percent *ad valorem*.

**Verification**

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including tracing the information in the responses to source documents, accounting ledgers, financial statements and annual reports.

**ITC Notification**

In accordance with section 705 of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing the Customs officers to assess countervailing duties on all entries of OCTG from Israel entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

January 7, 1987.

[FR Doc. 87-915 Filed 1-14-87; 8:45 am]

BILLING CODE 3510-DS-M

---

## National Oceanic and Atmospheric Administration

**[Docket No. 61227-6227]**

## Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

January 12, 1987.

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of proposed funding priorities for financial assistance.

**SUMMARY:** For FY 87, Saltonstall-Kennedy (S-K) funds are available to assist persons in carrying out research and development projects which address aspects of U.S. fisheries involving the U.S. fishing industry (commercial or recreational) including, but not limited to, harvesting,

processing, and associated infrastructures. NMFS issues this notice describing the proposed funding priorities for FY 87 financial assistance and invites comments from interested parties.

**DATE:** Comments should be sent to the S–K Program Office, National Marine Fisheries Service, Washington, DC 20235 by February 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Phyllis S. Bentz, S–K Program Manager, National Marine Fisheries Service, Washington, DC 20235, Telephone: 202–673–5497.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c–2–713c–3— makes available to the Secretary of Commerce up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use a portion of these funds each year to make available grants to assist persons in carrying out research and development projects which address aspects of United States fisheries, including, but not limited to, harvesting, processing, and associated infrastructures. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

There is no guarantee that sufficient funds will be available to make awards for all approved projects. For FY 87, $7.4 million was appropriated for the S–K program. Approximately $559,000 has been committed to fund the second and third years of previously approved multi-year projects, and about $6.8 million may be used to fund new fisheries research and development projects, subject to availability.

## II. Proposed Funding Priorities

The NMFS is publishing the proposed FY 87 S–K funding priorities to provide interested parties an opportunity for review and comment. This opportunity for public comment is provided prior to publication of the formal solicitation for FY 87 proposals. Comments should be sent to the S–K Program Office, National Marine Fisheries Service, Washington, DC., 20235 by February 17, 1987.

Consistent with authorizing legislation, NOAA proposes to emphasize the use of current and future S–K funds appropriated by Congress for industry grants in the following manner. Priority areas and associated research and development activities that will be designated for funding will be those that are beyond the scope of any single entity within the fishing industry to undertake without Government assistance because of one or more of the following: (1) There is a high degree of risk in achieving positive results; (2) the potential benefits are too widely dispersed; and (3) the time frame for resolution of the problem or issue is long or unknown. While multi-year approaches to address these research areas are encouraged, this does not preclude funding of short term proposals.

As in the past, except for the Western Pacific, Puerto Rico, and the U.S. Virgin Islands, funding will not be provided for projects primarily involving the following activities: (1) Infrastructure planning and construction; (2) port and harbor development; (3) aquaculture research and development; (4) resource enhancement; (5) research evaluating the ability or extent to which fish are attracted to fish aggregating devices; and (6) extension activities such as newsletters.

As in past years, NMFS has solicited recommendations for S–K funding priorities from a wide cross section of the U.S. fishing industry. The NMFS has received these recommendations and has drafted a set of priority recommendations. These proposed priorities are identified on a regional basis according to specific fisheries. Some proposed priorities were found to relate to several, and in a few instances, all fisheries or regions and are listed as national priorities.

Proposed priorities for FY 87 funding within specific fisheries are listed below, along with a summary of activities funded in FY 86.

### *A. Northeast Region*

1. Squid, Mackerel and Butterfish: Projects funded in FY 86 focused on continued product development and both domestic and export market development activities for undervalued mixed species, particularly, mackerel, hakes, herring, ocean pout, skates, and dogfish; seafood health and nutrition through consumer education; increasing exports of Mid-Atlantic seafood products through participation in foreign trade shows; developing and demonstrating selective fishing gear to reduce habitat destruction and provide escapement for juveniles and non-target species by-catch; developing a regional towed gear observation system.

For FY 87, the NMFS seeks projects which will complement these activities or address other developmental impediments. Specifically, the NMFS will give priority for funding to projects that:

a. Conduct economic feasibility analyses on harvesting and processing of non-traditional species.

b. Identify chemical indicators of decomposition and conduct authentic pack studies according to an FDA standard protocol permitting objective and subjective measurements of changes in inherent textural and sensory characteristics at various intervals of storage in squid, mackerel and butterfish.

c. Analyze factors affecting quality and shelf-life of fish and fish products.

d. Design, test, and/or demonstrate various types of fishing gear which will enhance conservation measures by reducing by-catch of juveniles and non-target species.

2. Atlantic Demersal Finfish: In FY 86 efforts were continued to evaluate existing techniques and potentially new methods to process and use fish waste. Also funded was a project to demonstrate a prototype shrimp separator trawl and test the effectiveness of the trawling efficiency device (TED) both alone and in combination with the separator trawl.

In FY 87, priority will be given to projects which:

a. Evaluate the technical and economic feasibility of shifting fishing efforts to other species, such as the hakes and mackerel, and resolving associated problems.

b. Evaluate existing techniques or develop new methods to process and use fish wastes and determine technical and economic feasibility of their application. Efforts should supplement. and not duplicate on-going fish waste studies, e.g., those of the Northeast Fish Waste Task Force and the New England Fisheries Development Foundation.

c. Analyze factors affecting quality and shelf-life of fish and fish products.

d. Develop, modify, test, and/or evaluate harvesting methods that will enhance conservation measures by reducing the by-catch of juveniles and non-traget species.

3. coastal, Estuarine and Great Lakes Fisheries: Projects funded in FY 86 focused on developing new markets for underutilized species of freshwater fish and fish products in the Great Lakes area and other States having

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

commercial fisheries dependent upon harvesting underutilized species of freshwater fish; feasibility and modeling of the use of New Jersey salt marshes to treat clam processing waste waters in order to reduce the amount and cost of in-plant conventional treatment necessary to achieve state effluent standards; and characterization and utilization of wastes from ocean guahog and surf clam processing plants.

Priorities for FY 87 funding will focus on projects which:

a. Conduct an economic analysis of the impact of marine recreational fisheries on the regional economy.

b. Examine and demonstrate the potential for developing marine recreational fishing as a new industry in coastal communities; and developing new recreational fisheries to reduce fishing pressure on over-harvested stocks.

c. Develop and/or demonstrate fishing gear which increases survival of fish taken in catch-and-release marine recreational fisheries.

*B. Southeast Region*

Both commercial and recreational project should be concentrated on shifting current harvesting activity from fully or over utilized fisheries to alternate fisheries, or should contribute to solutions for the specific problem areas identified in the following sections. Proposals should contain appropriate economic analysis where the output's applicability and priority depend upon the product, process, or concept being economically viable.

1. Latent Southeast Resources: A major initiative funded during FY 86 focused on foreign and domestic market investigations; exploratory fishing; handling and storage studies; and product and market concept development. Also funded were projects: to develop voluntary seafood product quality codes based on industry recommendations and supported by existing pertinent regulatory documentation; to investigate quality control procedures for fresh yellowfin tuna; to provide an updated log of bottom obstructions in the Gulf of Mexico; to conduct a study to develop a demand for recreational fishing in Puerto Rico and the Virgin Islands; to evaluate access and infrastructure needs for recreational fishery development in Puerto Rico and the Virgin Islands; and to develop a strategy for integrating the marine recreational fishing and tourism industries.

For FY 87, the priority areas of consideration include:

a. Proposals which lead to the development, refinement and/or demonstration of harvesting methods for the coastal herrings complex. Emphasis can be on vessel type, gear type, electronics, fishing strategy or some combination of these.

b. On-board care of seafood. Studies in this area can address improved, handling, sorting and storage of seafood. The studies can address quality, cost-savings, overall efficiency, methods for live release of unwanted sizes or species or other worthy objectives.

c. Catalog of recreational fishing materials. Develop a catalog of available printed and audio-visual materials dealing with recreational fisheries related conservation, managment, development and other related topics of interest to sportsmen. Catalog should indentify source, ordering instructions, and a brief content annotation.

d. Program to identify underutilized recreational species. This work should expand and build upon intitial and ongoing research.

2. Menhaden: A project was funded in FY 86 to study the utilization of menhaden minces and surimi for direct consumption and use in further processed foods.

No proposals relating only to menhaden are solicited for FY 87 funding.

3. Shrimp: A project was funded in FY 86 to develop a video tape showing a model safety program for Gulf and South Atlantic shrimp trawling vessels.

In FY 87 funding priority will be given to proposals designed to provide for the testing and evaluation of alternative trawl efficiency devices (TED's). Proposals should complement and not duplicate current efforts in this area.

4. Molluscan Shellfish: Funded in FY 86 were projects to study molluscan shellfish growing water quality and market standards and to study the removal (depuration) of Hepatitis A virus in shellfish.

In FY 87 priority will be given to proposals which address quality and safety issues in molluscan shellfish. All proposals in this area must demonstrate knowledge of relevant past and curent research. Specifically, proposals should:

a. Address ways to provide for more uniformity in regulations and practices among States.

b. Address improved sampling protocols.

c. Identify critical control points during handling and/or address problems related to the recreational harvesting of shellfish.

d. Improve handling of shellstock by examining current practices and the extent of shell breakage/contamination.

e. Study application of nucleic acid probes and various immunoligical techniques to measure and detect pathogenic viruses.

f. Develop studies leading to improved microbiological standards by defining the relationship between *Escherichia coli* concentrations in shellfish and their growing waters and which would also evaluate the conditions for and rate of growth of *E. coli* in shellfish and their harvest waters.

5. General: The following priorities pertain to all Southeast fisheries:

a. Gear selctivity. Proposals will be entertained for gear development and/or fishing strategies to eliminate unwanted by-catch, including unwanted sizes or species. The proposals can be for any fishing gear including various trawls and nets as well as pelagic or bottom or longline gear.

b. Studies to resolve user conflicts. A current barrier to orderly development of commercial and recreational fisheries is an existing and growing set of user conflicts which center around the access to and use of the fishery resources of the Gulf and South Atlantic. Proposals are encouraged which provide innovative approaches to the resolution of such conflicts.

c. Trade barrier identification. Proposals should either identify existing tariff and non-tariff trade barriers or provide for methodologies to discover such barriers. Proposals can also include an analysis of the impact of trade barriers as well as methods or strategies for private and/or public actions to eliminate or minimize such barriers.

*C. Southwest Region*

The Southwest Region is comprised of two distinct geographic areas—the U.S. Pacific Islands and the California coast. The island fisheries differ significantly in many instances from the mainland fisheries. Accordingly, we have established a list of proposed funding priorities for each of the georgraphic areas.

1. U.S. Pacific Islands. Projects funded in FY 86 provide for continued development of infrastructure facilities in Guam and the Northern Mariana Islands, exploratory fishing for surface albacore in the South Pacific, and continued research on fishery enhancement through reseeding of island reef areas with juvenile trochus and giant clams. Exploratory fishing projects are being carried out in the Hawaii tuna handline fishery and Palau's deep sea shrimp fishery. In the

Federated States of Micronesia, a recently developed poke stick detection method for ciguatera poisoning in tropical fishes is undergoing its first field test to evaluate its effectiveness.

In the U.S. Pacific Islands, priority consideration will be given in FY 87 to projects which contribute to the fishery development goals of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific islands. High priority will be given to projects with regional benefits. All proposals should be consistent with the cultural and social values of Pacific island communities.

Projects related to fish aggregation devices (FADs) will not be funded during this cycle. The problem affecting FADs throughout the Pacific is the short life expectancy caused by basic deficiencies in mooring design. Based upon the recommendations of a 1983 mooring design study sponsored by the South Pacific Commission, the NMFS has funded FAD projects in Yap and American Samoa. Preliminary results indicate improvement in life expectancy, but data are sketchy and final results are not available. A policy on future S–K support of FADs will be announced this fiscal year.

Proposals which address problems in the following areas will be given priority for funding in FY 87.

a. Tuna: Investigate techniques for improving the yield of sashimi-grade tuna in Pacific Island areas. Particular attention should be given to product quality control and market requirements.

b. Other Pelagic Species: Projects related to other oceanic pelagic species (e.g., mahimahi, wahoo, billfish, shark) should focus on overseas market requirements. Particular attention should be given to maintaining product quality (e.g., avoidance of histamine in mahimahi, urea in shark) through improved handling, processing, and storage methods.

c. Recreational fisheries: Projects should assess the opportunities and identify strategies for development of charter sport fishing ventures in Pacific Island areas. Such development should be integrated with local tourism development and be consistent with local economic development priorities. Services and facilities available and needed for sport fishing development should be identified.

d. Vessel Support Services and Facilities: Proposals for the design, engineering and construction of needed fishing vessel support services and facilities (e.g., launch ramps) will be considered. Proposals should demonstrate a need by local fishermen.

e. Bottomfish: Projects to expand export channels for these species are requested. Projects for bottombish development in areas where the resources may be distressed and unable to withstand added fishing pressure will not be funded.

2. California

a. West Coast Groundfish/California: In FY 86 the NMFS funded projects: to investigate gear conflicts and develop alternate gears; to establish seafood advertising standards; to establish a prototype seafood retail training school; and to develop an operating model to analyze changing economic conditions (landings, prices, etc.) in the fishing industry on the West Coast.

In FY 87 innovative projects that address the priorities identified below will be considered for any groundfish species. Pacific Whiting and shortbelly rockfish continue to be the highest priority groundfish species for commercial development in FY 87. Specifically, priority for funding will be given to projects that:

(1) Examine or demonstrate innovative fishing techniques that improve continued production, minimize conflict between the needs of developing fisheries and the management of developed fisheries (or vice versa), reduce marine mammal and bird mortality, and shift effort from fully utilized species.

(2) Investigate technology (machine or process) for using priority West Coast groundfish species commercially; identify consumption or regulatory factors inhibiting the use of underutilized groundfish species.

(3) Demonstrate product quality assurance and control technologies from the net to the table.

(4) Investigate cost effective methods to reduce or use fish processing waste. Proposals should supplement, and not duplicate, ongoing fish waste studies, e.g., those of the New England Fisheries Development Foundation.

(5) Develop models and data acquisition systems to analyze California marine recreational and commercial fishing activity for economic, social or ecological impact. Such research should focus on the interaction between fisheries, particularly multiple fishery fishing.

b. Albacore Tuna: Projects funded in FY 86 address development of quality control standards and marketing products in institutional markets and in Pacific coast retail trade.

Priority for FY 87 funding will be given to projects which:

(1) Identify and demonstrate cost efective technology for producing alternatives to canned albacore tuna.

(2) Demonstrate quality control measures that improve market acceptance of fresh and frozen products.

(3) Develop effective handling methods for promoting increased home consumption of sport-caught tuna.

c. West Coast Coastal Pelagics: Projects funded in FY 86 are to develop bone softening techniques that may result in new uses for some coastal pelagic species, and to investigate recreational species preferences and encourage fishing for underutilized species.

In FY 87, priority will be given to projects that:

(1) Investigate technologies (machine or process) for using coastal pelagic species commercially or upgrading existing uses; identify consumption or regulatory factors inhibiting the use of underutilized coastal pelagics.

(2) Evaluate sport catch consumption patterns and develop altenatives for greater utilization of sport-caught species that are presently discarded.

d. Multi-species Industrial Development: Some projects cross species groups. Worthy proposals that do not fit neatly within the above species groups will be considered in FY 87. Such proposals should pertain to domestically available resources and to problems specific to the Southwest Region.

*D. Northwest region*

The Nortwest fishing industy reuires a research and development program which focuses on fully utilizing groundfish found in the Exclusive Economic Zone (EEZ) off Oregon, Washington and Alaska. The Region's industry is heavily dependent on the resources found in the EEZ off Alaska, and therefore will invest in projects of high quality which support this segment of the industry.

1. West Coast Groundfish (Oregon, Washington and Alaska): The NMVS funded projects in FY 86 that were to: develop new product forms utlizing pollock; develop and test technologies to minimize crab by-catch in the groundfish trawl fishery; examine the impact of the foreign fishing allocation of North Pacific pollock on U.S. harvesters and processors; develop educational materials detailing research findings concerning the nutritional impacts of seafood consumption; research the long-term effects of modifying the diet to include groundfish; examine and analyze the factors impacting the international

competitivenes of the North Pacific seafood industry; assist the factory trawlers in developing at-sea quality standards and an inspection system for their fleet; promote the recreational angling opportunities for non-salmonid species off the coasts of Oregon and Washington; continue to develop a safety training program for fishing vessels; and continue the study of impacts of fish oils in plasma lipids in humans.

The FY 97 priorities outlined below will focus on research and devlopment activities which will support the continued growth of the Region's industry. Groundfish species in need of further development include the following: pollock, whiting, dogfish shortbelly rockfish, offshore squid, and assorted flatfishes found in the EEZ.

a. Develop new or improved processing and harvesting technologies which increase efficiency, productivity, and competitiveness of the Region's industry. Specific projects may:

(a) Develop new or improved processing and harvesting technologies which increase efficiency, productivity, and competitiveness of the Region's industry. Specific projects may:

(1) Develop an improved technology which will more efficiently process flatfishes.

(2) Evaluate the effect of crab predation by groundfish stocks.

(3) Develop and evaluate new gear technolgoy in an attempt to measure effectiveness in reducing by-catch of traditional species, and improving catch efficiencies and quality of fish delivered to processing plants.

(4) Assess the comparative value of groundfish harvested by various gear techniques and evaluate the implications for the industry.

b. Continue research and analysis which assists industry in overcoming trade barriers and provides useful data in formulating trade marketing stragetgies. Specific trade activities may:

(1) Develop industry trade policy positions and dissemination of information resulting from such efforts.

(2) Determine the volume and impact of foreign processed EEZ species on the U.S. competitivness in domestic and world markets.

(3) Determine the economic impact of foreign subsidies on U.S. competitiveness in domestic and world markets.

c. Develop technology which will improve the quality of groundfish and groundfish products. Such projects should not subsidize the use of existing systms to provide quality groundfish.

d. Continue development of a safety training program for fishing vessels and processing plants. Specific projects may:

(1) Monitor and evaluate the impacts of voluntary safety initiatives.

(2) Develop a safety program specifically for processing plants, at-sea or shoreside.

2. West Coast Salmon (Oregon, Washington, and Alaska). The FY 87 priorities outlined below will support the full development of the pink salmon and chum salmon fisheries found in the EEZ off Oregon, Washington, and Alaska. Large surpluses have prevented optimum economic return. Such projects may:

a. Investigate new technologies (machine or process) for using West Coast salmon species commercially.

*E. Alaska Region*

Alaska Groundfish: Projects funded in FY 86 address pollock surimi production, quality, technology development, and education; product and market development; and new processing technology. Significant imbalance currently exists in the capability of the processing and catching segments of the industry. The industry's ability to catch the raw material far exceeds its ability to process and market the groundfish products from this new fishery.

Proposals which address impediments to full use of Alaska groundfish in the following areas will be given priority for funding in FY 87.

1. Improve processing, product quality and competitiveness of the Alaska groundfish industry by:

a. Developing technology to increase processing efficiency and productivity. Specific needs:

(1) Develop new flatfish technology.

(2) Improve utilization of by-catch species.

b. Developing and demonstrating technology to increase utilization and improve value of by-products from groundfish processing operations.

c. Upgrading the quality of products. Specific needs:

(1) Develop product standards for U.S. produced pollock surimi.

(2) Evaluate seasonal variation in flesh quality of major groundfish species.

2. Develop technologies and information for the harvesting segment of the Alaska groundfish industry to reduce the by-catch of non-target species and minimize conflicts between gear types.

3. Continue the development of a vessel safety program that reduces operational costs and increases efficiency of the Alaska groundfish fleet.

*F. National*

In FY 86, the NMFS funded national projects which address issues cross-cutting a number of fisheries and regions. Specifically, NMFS funded projects which address strategies to reduce fishing vessel insurance costs and improve vessel safety; develop and implement a standard system for seafood inclusion in the Universal Product Code; estimate and forecast economic activity associated with marine recreational fisheries at five year intervals and develop tools to estimate the economic value of fisheries to different user groups; develop video tape training programs for use by vessel and processing plant operators addressing sanitation, refrigeration, personal hygiene and sodium bisulfate applications; develop international standards and processing guidelines for frozen squid products; describe the movement of fresh and frozen seafood products from domestic harvesting through processing, identifying control points as a first step in establishing a comprehensive seafood inspection system for the U.S. industry; conduct investigations to determine the nutritional equivalency of surimi with natural seafood products; develop a commercially feasible hyperfiltration system for recovery of proteins and other soluable materials from the surimi production process; conduct a national seafood/health nutrition communication program; and conduct regional and national conferences relating to "Matching Capital to Resources in the Fish Harvesting Industry: Limited Entry and/or Other Alternatives."

In FY 87 consideration will be given to proposals which address the following areas:

1. Determine critical control points for fishery products. In conjunction with the on-going study to identify public health risks in processing seafood, provide detailed descriptions and flow diagrams of the harvesting, processing, and distribution conditions affecting the following product/process categories of fishery products: pickled, dried, salted/smoked, vaccum packed, cooked, breaded/batter-dipped, engineered, and irradiated, based on observations made at statistically representative vessels and facilities. (This information will subsequently be used to identify critical control points and recommend methods and tolerances to ensure the production and distribution of safe, wholesome, and properly labeled fishery products. This hazard analysis and critical control point concept is in concert with

recommendations made by the National Academy of Science.)

2. Identify and analyze the impacts of foreign aquaculture species on U.S. trade in fisheries products.

3. Develop analytical research data with emphasis on fatty acids and other nutrients of public concern, to correct deficiencies in available information on the chemical and nutritional composition of seafoods. These data will be used to provide accurate nutrient information on seafoods available for consumption by the U.S. consumer and will assist in the development of factual seafood nutrition/health educational programs to encourage seafood consumption.

4. Identify and analyze barriers to exports of sport fishing equipment and develop industry positions for multilateral trade negotiations.

5. Determine the feasibility of obtaining and measuring biomedically important compounds from seafood or seafood waste materials.

Dated: January 12, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-902 Filed 1-14-87; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DOD Advisory Group on Electron Devices Advisory Committee Meeting

**SUMMARY:** Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Thursday, 5 February 1986.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

January 12, 1987.

[FR Doc. 87-929 Filed 1-14-87; 8:45 am]

BILLING CODE 3810-01-M

### DOD Advisory Group on Electron Devices, Advisory Committee Meeting

**SUMMARY:** The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Tuesday, 6 January 1987.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

January 12, 1987.

[FR Doc. 87-930 Filed 1-14-87; 8:45 am]

BILLING CODE 3810-01-M

### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group D (Production) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 1000, Wednesday and Thursday, 14 and 15 January 1987.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Svc, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Thomas Henion, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g., manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability to skilled people to support the critical electronic component supply base. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that

accordingly, this meeting will be closed to the public.

Patricia H. Means;

*OSD Federal Register Liaison Officer, Department of Defense.*

January 12, 1987.

[FR Doc. 87-931 Filed 1-14-87; 8:45 am]

BILLING CODE 3810-01-M

### Defense Advisory Committee on Women in the Services; Meeting

**AGENCY:** Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the responses to the Recommendations, Requests for Information, and Continuing Concerns made by the Committee at the 1986 Fall Meeting; review the Subcommittee Issue Agendas; discuss current issues relevant to women in the Services; and finalize the program for the next semiannual meeting scheduled for May 3-7, 1987, in the Washington, DC area.

All meeting sessions will be open to the public.

**DATE:** February 2, 1987, 9:00 a.m.-5:00 p.m.

**ADDRESS:** SecDef Conference Room 3E869, The Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

P.H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

January 12, 1987.

[FR Doc. 87-932 Filed 1-14-87; 8:45 am]

BILLING CODE 3810-01-M

### DOD-University Forum; Open Meeting

**AGENCY:** Office of Research and Laboratory Management, DOD.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Working Group on Engineering and Science Education of the DoD-University Forum will meet in open session on January 20, 1987, from 10:00 a.m. until 4:00 p.m. and on January 21, 1987, from 9:00 a.m. until 4:00 p.m., at the Hyatt Regency Hotel-Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meeting is to solicit advice from the Working Group on the preparation of two reports for Congress. The reports require DoD to address the "peer review" process and geographical distribution of defense-related university research funds, and to present a plan for increased support of university research programs.

Public attendance will be accommodated as space permits. Public attendees are requested to contact the DoD Office of Research and Laboratory Management before COB, January 15, 1987, to be advised of the meeting room and seating accommodations.

This notice is being published late due to the recent discovery that the original notice, prepared for publication in December, was lost in transit.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark Herbst, Office of Research and Laboratory Management, (202) 694-0205.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

January 12, 1987.

[FR Doc. 87-933 Filed 1-14-87; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF EDUCATION

### Notice Inviting Applications for Research Fellowships Under the National Institute on Disability and Rehabilitation Research for Fiscal Year 1987 (CFDA No. 84.133F)

*Purpose:* Provides support directly to highly qualified individuals to conduct research on the rehabilitation of disabled persons. Individuals may propose research in any area to promote solutions to problems related to disability.

*Deadline for Transmittal of Applications:* April 1, 1987.

*Applications Available:* January 23, 1987.

*Available Funds:* $100,000.

*Estimated Range of Awards:* $25-$30,000 plus $1,500 for expenses.

*Estimated Average Size of Awards:* $27,500 plus $1,500 for expenses.

*Project Period:* 12 months.

*Applicable Regulations:* National Institute on Disability and Rehabilitation Research Regulations, 34 CFR Part 356.

*For Applications or Information Contact:* George Engstrom, National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC, 20202. Telephone: (202) 732-1207; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

*Program Authority:* 29 U.S.C. 760-762.

Dated: January 12, 1987.

Madeleine Will,

*Assistant Secretary for Special Education and Rehabilitation Services.*

[FR Doc. 87-923 Filed 1-14-87; 8:45 am]

BILLING CODE 4000-01-M

### Notice Inviting Applications for New Awards Under the National Institute on Disability and Rehabilitation Research Program of Research and Demonstration Projects in Research Training for Fiscal Year 1987 (CFDA No. 84 133P)

*Purpose:* Withdrawal Notice.

On December 10, 1986 a Notice Inviting Applications for New Awards Under the National Institute on Disability and Rehabilitation Research Program of Research and Demonstration Projects in Research Training for Fiscal Year 1987 was published at 51 FR 44508. The notice was inadvertently submitted for publication twice. The first printing of the notice in column one is corrected to add "34 CFR Part 75" to the Applicable Regulations section. The second printing of the notice in column two beginning with "CFDA No. 84.133P" is both inaccurate and incomplete and is withdrawn.

*Program Authority:* (29 U.S.C. 760-762).

Dated: January 12, 1987.

Madeleine Will,

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 87-924 Filed 1-14-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Office of Assistant Secretary for International Affairs and Energy Emergencies

### Proposed Subsequent Arrangement, International Atomic Energy Agency

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned

agreement involves approval for the supply of the following material:

Contract Number WC–IA–135, for the sale of 0.0513 grams of plutonium to the IAEA, Vienna, Austria, for use for measurement standards and evaluation.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: January 12, 1987.

For the Department of Energy.

**George J. Bradley, Jr.**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 87–917 Filed 1–14–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Reguatory Commission

### Notice of Hydroelectric Application Filed With the Commission

January 12, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Reguatory Commission and is available for public inspection:

a. Type of Application: Minor License.

b. Project No.: 6675–001.

c. Date Filed: March 29, 1984, and revised March 24, 1986.

d. Applicant: Jennings—Oftedahl Company.

e. Name of Project: Spruce Water.

f. Location: At the National Forest Service's dam in Gifford Pinchot National Forest, on Trout Creek, Skamania County Washington. Township 4N and Range 7E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Michael Jennings, P.O. Box 2478, College Station, Pullman, WA 99165, (509) 332–0112.

i. Comment Date: January 29, 1987.

j. Description of Project: The revised modifications to the National Forest Service's dam would consist of: (1) a steel frame, trash rack and fish screen (2 screen sides each 32 feet by 18 feet) extending upstream from the dam at the project headgate; (2) a powerhouse immediately downstream of the south side of the dam containing two generating units rated at 225 kW and 160 kW respectively with an average annual output of 1.485 GWh; (3) a concrete tailrace structure; (4) existing flashboards along the crest of the dam; and (5) a 65-foot-long transmission line.

The notice includes changes to the project description filed on March 24, 1986, with the Commission as a revision to the application for minor license. This description supplements the public notice issued on January 15, 1985.

k. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

c. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission; 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825/ (b) that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–876 Filed 1–14–87; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### Bio-Gro® Premix; Withdrawal of Approval of NADA

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) providing for use of Bio-Gro® Premix (salinomycin) to make Type C feeds for feedlot cattle for increased rate of weight gain and/or improved feed efficiency. The sponsor requested the withdrawal of approval.

**EFFECTIVE DATE:** January 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Vitolis E. Vengris, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

**SUPPLEMENTARY INFORMATION:** A.H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261, is sponsor of NADA 137–654 providing for use of Bio-Gro® Premix (salinomycin) to make Type C feeds for increased rate of weight gain and/or improved feed efficiency. The feeds are indicated for beef cattle being fed in confinement for slaughter. The NADA was approved January 7, 1986. In a letter dated October 8, 1986, the firm requested withdrawal of approval of the NADA without prejudice.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 137–654 and all supplements thereto for Bio-Gro® Premix is hereby withdrawn, effective January 26, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing and reserving 21 CFR 558.550(b)(2) reflecting approval of this NADA.

Dated: January 8, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–856 Filed 1–14–87; 8:45 am]

BILLING CODE 4160–01–M

---

**[Docket No. 77N–0240; DESI 12836]**

## Dipyridamole; Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption, Followup Notice and Opportunity for Hearing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is revoking the temporary exemption that has allowed drug products containing dipyridamole to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. FDA is reclassifying the drug to lacking substantial evidence of effectiveness for long term therapy of chronic angina pectoris, proposing to withdraw approval of the new drug applications insofar as they provide for the indication reclassified to lacking substantial evidence of effectiveness, and offering an opportunity for a hearing on the proposal. Dipyridamole is categorized as a coronary vasodilator.

**DATES:** The revocation of the temporary exemption is effective January 15, 1987; requests for hearing are due on or before February 17, 1987; data in support of hearing requests are due March 16, 1987.

**ADDRESS:** Communications in response to this notice should be identified with the reference number DESI 12836, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for hearing, supporting data, and other comments (identify with Docket No. 77N–0240): Dockets Management Branch (HFA–305), Rm. 4–62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics.

**FOR FURTHER INFORMATION CONTACT:** Judy O'Neal, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In a notice published in the **Federal Register** of February 17, 1971 (36 FR 3078), FDA classified Persantine Tablets containing dipyridamole as possibly effective for long-term therapy of chronic angina pectoris. FDA based its conclusion on a report received from the National Academy of Sciences/National Research Council (NAS/NRC) as part of the Drug Efficacy Study Implementation (DESI) program.

The notice allowed holders of previously approved NDAs and any person marketing the drug without approval to submit data to provide substantial evidence of effectiveness for the possibly effective indication.

Subsequently, in a notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), FDA temporarily exempted certain coronary vasodilators, including Persantine, from the time limits established for completing the DESI program. That exemption allowed the products to remain on the market while studies were conducted to determine effectiveness. FDA granted the exemption because of the medical need for, and absence of, effective drugs for treatment and prevention of anginal attacks.

Subsequently, the agency amended the exemption (August 26, 1977; 42 FR 43127) to announce: (1) The availability of guidelines and methods for evaluating the bioavailability and effectiveness of coronary vasodilators and (2) specific conditions under which the products could be marketed while the studies are in progress. Continued marketing would only be permitted for coronary vasodilator products whose sponsors first perform adequate studies that demonstrate the bioavailability of their products, and subsequently conduct well-controlled studies to demonstrate clinical effectiveness. In addition, an abbreviated new drug application (ANDA) was required for any product on the market without an approved NDA. The following products were permitted to continue marketing under the terms of the exemption:

1. NDA 12–836; Persantine Tablets containing 25 milligrams (mg) of dipyridamole per tablet; Boehringer Ingelheim Pharmaceuticals, Inc., 90 East Ridge, Ridgefield, CT 06877.

2. ANDA 86–758; Persantine Tablets containing 75 mg dipyridamole per tablet; Boehringer Ingelheim.

3. ANDA 86–759; Persantine Tablets containing 50 mg of dipyridamole per tablet; Boehringer Ingelheim.

4. ANDA 86–944; Dipyridamole Tablets containing 25 mg of the drug per tablet; Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.

5. ANDA 86–981; Dipyridamole Tablets containing 25 mg of the drug per tablet; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.

6. ANDA 87–008; Dipyridamole Tablets containing 25 mg of the drug per tablet; Zenith Laboratories Inc., 140 Le Grand Ave., Northvale, NJ 07647.

7. ANDA 87–039; Dipyridamole Tablets containing 25 mg of the drug per tablet; Chelsea Laboratories, Inc., 428 Doughty Blvd., Inwood, NY 11696.

8. ANDA 87–094; Dipyridamole Tablets containing 25 mg of the drug per tablet; Par Pharmaceutical, Inc., 12 Industrial Ave., Upper Saddle River, NJ 07458.

9. ANDA 87–160; Dipyridamole Tablets containing 50 mg of the drug per tablet; Chelsea Laboratories.

10. ANDA 87–161; Dipyridamole Tablets containing 75 mg of the drug per tablet; Chelsea Laboratories.

11. ANDA 87–184; Dipyridamole Tablets containing 25 mg of the drug per tablet; Barr Laboratories, Inc., 265 Livingston St., Northvale, NJ 07647.

12. ANDA 87–316; Dipyridamole Tablets containing 50 mg of the drug per tablet; Zenith Laboratories.

13. ANDA 87–320; Dipyridamole Tablets containing 75 mg of the drug per tablet; Zenith Laboratories.

14. ANDA 87–360; Dipyridamole Tablets containing 75 mg of the drug per tablet; Par Pharmaceutical.

15. ANDA 87–419; Dipyridamole Tablets containing 25 mg of the drug per tablet; Danbury Pharmacal, 131 West St., Danbury, CT 06810.

16. ANDA 87–561; Dipyridamole Tablets containing 75 mg of the drug per tablet; Cord Laboratories.

17. ANDA 87–562; Dipyridamole Tablets containing 50 mg of the drug per tablet; Cord Laboratories.

18. ANDA 87–650; Dipyridamole Tablets containing 50 mg of the drug per tablet; Par Pharmaceutical.

19. ANDA 87–664; Dipyridamole Tablets containing 75 mg of the drug per tablet; Ascot Hospital Pharmaceuticals, Inc., 8050 North Lawndale Ave., Skokie, IL 60076.

20. ANDA 87–676; Dipyridamole Tablets containing 25 mg of the drug per tablet; Mylan Pharmaceuticals, Inc., P.O. Box 4293, Morgantown, WV 26505.

21. ANDA 87–688; Dipyridamole Tablets containing 25 mg of the drug per tablet; Ascot.

22. ANDA 87–710; Dipyridamole Tablets containing 25 mg of the drug per tablet; Vangard Laboratories, 101–107 Sampson St., Glasgow, KY 42141.

23. ANDA 87–716; Dipyridamole Tablets containing 50 mg of the drug per tablet; Barr Laboratories.

24. ANDA 87–717; Dipyridamole Tablets containing 75 mg of the drug per tablet; Barr Laboratories.

25. ANDA 87–754; Dipyridamole Tablets containing 25 mg of the drug per tablet; Superpharm Corp., 155 Oval Dr., Central Islip, NY 11722.

26. ANDA 87–755; Dipyridamole Tablets containing 75 mg of the drug per tablet; Superpharm.

27. ANDA 87–802; Dipyridamole Tablets containing 25 mg of the drug per tablet; Hasey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.

28. ANDA 87–803; Dipyridamole Tablets containing 75 mg of the drug per tablet; Hasey Drug.

29. ANDA 87–929; Persantine-50 Tablets containing 50 mg dipyridamole per tablet; Boehringer Ingelheim.

30. ANDA 87–832; Persantine-75 Tablets containing 75 mg dipyridamole per tablet; Boehringer Ingelheim.

31. ANDA 87–843; Dipyridamole Tablets containing 25 mg of the drug per tablet; Lederle Laboratories, Pearl River, NY 10965.

32. ANDA 87–873; Dipyridamole Tablets containing 25 mg of the drug per tablet; Pharmaceutical Basics, P.O. Box 9327, Denver, CO 80209.

33. ANDA 87–882; Dipyridamole Tablets containing 50 mg of the drug per tablet; Mylan Pharmaceuticals.

34. ANDA 87–883; Dipyridamole Tablets containing 75 mg of the drug per tablet; Mylan Pharmaceuticals.

35. ANDA 88–033; Dipyridamole Tablets containing 25 mg of the drug per tablet; Purepac Pharmaceuticals Co., 200 Elmora Ave., Elizabeth, NJ 07207.

36. ANDA 88–263; Dipyridamole Tablets containing 50 mg of the drug per tablet; Vangard Laboratories.

37. ANDA 88–264; Dipyridamole Tablets containing 75 mg of the drug per tablet; Vangard Laboratories.

38. ANDA 88–300; Dipyridamole Tablets containing 50 mg of the drug per tablet; Unit Dose Laboratories, 1550 Elmwood Rd., Rockford, IL 61103.

39. ANDA 88–301; Dipyridamole Tablets containing 75 mg of the drug per tablet; Unit Dose Laboratories.

40. ANDA 88–315; Dipyridamole Tablets containing 25 mg of the drug per tablet; Unit Dose Laboratories.

41. ANDA 88–362; Dipyridamole Tablets containing 50 mg of the drug per tablet; Lederle Laboratories.

42. ANDA 88–363; Dipyridamole Tablets containing 75 mg of the drug per tablet; Lederle Laboratories.

43. ANDA 88–413; Dipyridamole Tablets containing 50 mg of the drug per tablet; Superpharm.

44. ANDA 88–434; Dipyridamole Tablets containing 50 mg of the drug per tablet; Ascot.

45. ANDA 88–442; Dipyridamole Tablets containing 25 mg of the drug per tablet; Duramed Pharmaceuticals, Inc., 72 Sylvester St., Westbury, NY 11590.

46. ANDA 88–443; Dipyridamole Tablets containing 50 mg of the drug per tablet; Duramed Pharmaceuticals.

47. ANDA 88–444; Dipyridamole Tablets containing 75 mg of the drug per tablet; Duramed Pharmaceuticals.

48. ANDA 88–466; Dipyridamole Tablets containing 50 mg of the drug per tablet; Halsey Drug.

49. ANDA 88–25; Dipyridamole Tablets containing 25 mg of the drug per tablet; West-Ward, Inc., 465 Industrial Way West, Eatontown, NJ 07724.

50. ANDA 88–513; Dipyridamole Tablets containing 50 mg of the drug per tablet; West-Ward, Inc.

51. ANDA 88–624; Dipyridamole Tablets containing 75 mg of the drug per tablet; West-Ward, Inc.

52. ANDA 88–683; Dipyridamole Tablets containing 25 mg of the drug per tablet; Sidmak Laboratories, 17 West St., East Hanover, NJ 07936.

53. ANDA 88–684; Dipyridamole Tablets containing 50 mg of the drug per tablet; Sidmak Laboratories.

54. ANDA 88–685; Dipyridamole Tablets containing 75 mg of the drug per tablet; Sidmak Laboratories.

55. ANDA 88–999; Dipyridamole Tablets containing 25 mg of the drug per tablet; Lederle Laboratories.

56. ANDA 89–000; Dipyridamole Tablets containing 50 mg of the drug per tablet; Lederle Laboratories.

57. ANDA 89–001; Dipyridamole Tablets containing 75 mg of the drug per tablet; Lederle Laboratories

58. ANDA 89–378; Dipyridamole Tablets containing 25 mg of the drug per tablet; Mutual Pharmaceutical Co., Inc., 1100 Orthodox St., Philadelphia, PA 19124.

59. ANDA 89–379; Dipyridamole Tablets containing 50 mg of the drug per tablet; Mutual Pharmaceutical Co., Inc.

60. ANDA 89–380; Dipyridamole Tablets containing 75 mg of the drug per tablet; Mutual Pharmaceutical Co., Inc.

61. ANDA 89–425; Dipyridamole Tablets containing 25 mg of the drug per tablet; Purepac Pharmaceutical Co.

61. ANDA 89–426; Dipyridamole Tablets containing 50 mg of the drug per tablet; Purepac Pharmaceutical Co.

62. ANDA 89–427; Dipyridamole Tablets containing 75 mg of the drug per tablet; Purepac Pharmaceutical Co.

In the interest of minimizing duplicative and costly clinical testing of essentially the same drug product, the agency concluded (February 17, 1978; 43 FR 7044) that each manufacturer need not clinically test it own product for effectiveness as long as at least one other manufacturer conducted appropriate tests on a product containing the same chemical entity in a similar dosage form. In a notice published in the **Federal Register** of September 15, 1978 (43 FR 41282), the agency announced that this new policy was implemented specifically with regard to single-entity coronary vasodilators. The agency also announced dates by which to submit an ANDA if the product was not already the subject of an approved NDA, to obtain conditional approval of an ANDA, to begin bioavailability studies, to submit bioavailability data, to begin clinical trials, and to report the results of clinical studies.

**II. Data Submitted for Treatment of Chronic Angina Pectoris**

*A. Background*

Angina pectoris is a clinical syndrome of intermittent chest discomfort or pain brought on by exertion or other forms of stress in patients with chronic ischemic heart disease. Episodes of angina pectoris result from an imbalance between oxygen supply and demand of the myocardium. Thus, angina pectoris occurs when there is an increase in myocardial oxygen demand coexisting with a fixed obstruction to coronary blood flow, such as that which occurs in coronary heart disease, or when a focal spasm occurs in arteriographically normal or diseased coronary arteries. It has been suggested that arteriosclerotic lesions, spasm, or other local factors may cause platelet clumping and the formation of obstructions; adherence of platelets to vessel endothelium and release of vasoconstrictor substances by aggregating platelets also may contribute to coronary artery obstruction.

The vasodilator effects of Persantine were presumed to be due to inhibition of the uptake of adenosine, a potent vasodilator, by red blood cells and myocardial and lung tissues. Additionally, Persantine decreases platelet aggregation and adhesiveness and inhibits platelet release of vasoactive substances.

FDA recognized the difficulty of evaluating the clinical effectiveness of drugs in the treatment of angina pectoris. Investigators needed a more objective means of evaluating therapeutic effectiveness than the anginal diary method, which relies upon the patient recording his angina attacks. With the develpment of excercise testing technology, a better tool was available.

In the **Federal Register** of August 26, 1977 (42 FR 43127), the agency announced the availability of guidelines developed by FDA's Cardiovascular-Renal Advisory Committee for investigating coronary vasodilators. Based on these guidelines, FDA considers a properly designed and conducted study using exercise tolerance testing a reasonably objective means of evaluating a drug's effectiveness in preventing angina pectoris. While a study lacking exercise testing, and relying wholly on angina rate recording, cannot be disregarded, it provides less persuasive evidence of effectiveness.

In September 1981, Boehringer Ingelheim submitted the results of four clinical studies intended to demonstrate the effectiveness of Persantine in the long-term therapy of chronic angina pectoris.

*B. The Winter Study*

An unpublished study of the effect of Persantine in patients with a history of classical, stable angina pectoris (at least five attacks per week) of at least 2 month's duration was conducted by Leo Winter Associates, Inc., from 1979 to 1981. During the single-blind initiation period of 12 weeks, the diagnosis of angina was confirmed while the patients received placebo, after which the dose of Persantine was titrated using exercise tolerance testing. The final 6 months formed a double-blind, 2-period, crossover study. Each period lasted 12 weeks separated by a 1-week placebo washout period. Patients were randomly assigned to either the Persantine-placebo or placebo-Persantine sequence.

Originally, 57 patients were admitted, but 21 failed to complete the entire 9-month study. Four patients failed to complete the study before the data cut-off point and 17 dropped out for various reasons, 16 during the single-blind portion and 1 during the double-blind portion. Three deaths were reported, two during the single-blind portion and one receiving placebo in the double-blind portion. Of the 36 patients for whom data were included in the sponsor's overall analysis, 8 were excluded from FDA's evaluation because the physician studying them was later disqualified from receiving investigational durgs.

Effectiveness was assessed by observing changes in the number of angina attacks per week and in the use of nitroglycerin as recorded in the patients' diaries, and also by measuring differences in excercise performance using a standardized treadmill test.

All but 4 of the 28 patients who were evaluated by FDA experienced decreases in the number of angina attacks and intake of nitroglycerin tablets per week during the initial 12-week baseline period.

During the double-blind stage of the study, only 2 of 28 patients experienced fewer angina attacks while receiving Persantine than while receiving placebo. (Seventeen patients experienced little to no angina during either the Persantine phase or the placebo phase; 5 others experienced no difference in the number of angina attacks. Four patients experienced more angina attacks while on Persantine compared to placebo.) Similarly, only 3 of 28 used less nitroglycerin while receiving Persantine than while receiving placebo. (Seventeen patients used little or no nitroglycerin during either the Persantine phase or the placebo phase of the double-blind stage of the study, while 4 experienced no change in their nitroglycerin requirements. Four patients used more nitroglycerin while on Persantine than while on placebo.) The sponsor acknowledged that Persantine produced no significant reductions in the frequency of anginal attacks or in nitroglycerin requirements.

Exercise duration was unchanged in 14 of 28 patients during the double-blind stage of the study. Duration of exercise increased in only 10 patients and actually decreased in 4 patients during Persantine administration, compared to their performance during placebo administration. By the sponsor's analyses, in which available data from the 8 patients of the disqualified investigator were included, Persantine treatment did not result in a statistically significantly greater mean exercise duration and lower mean ST segment change than placebo. The sponsor also analyzed a subgroup of patients who had baseline ST segment changes greater than or equal to 2.0 mm. For that group Persantine was said to have significantly increased the exercise duration (6.2 vs. 5.3 minutes, $p = .0010$) and the mean double product (18602 vs. 16564, $p = 0073$) compared to placebo.

This study does not demonstrate the effectiveness of Persantine in: (1) Decreasing the number of angina attacks, (2) decreasing the requirement for nitroglycerin, and (3) extending the duration of exercise. The arbitrarily selected post hoc subgroup of patients with ST segment changes of 2 mm or more does not provide evidence of effectiveness. Such analyses, with data in hand, are subject to bias; no explanation has been provided as to how such bias by the analyst of the data has been avoided (21 CFR 314.126(b)(5)).

*C. The Steele Study*

Peter Steele, M.D., performed a double-blind crossover study (unpublished) to assess the effect on platelet consumption and on angina pectoris of a combination of 75 mg Persantine and 325 mg of aspirin three times a day (t.i.d.) compared with 325 mg of aspirin along in patients with coronary artery disease. Sixteen males with angiographically proven coronary artery disease, stable angina of not less than five attacks per week, and shortened platelet survival time (1.8 to 2.8 half-life days, mean = 2.3 days) particpated in this study. Two patients dropped out before completing the first 12 weeks of the study because of severe epigastric pain 45 and 46 days after receiving aspirin or the Persantine/aspirin combination.

After baseline measurements were obtained, patients were randomly assigned to one of two groups. One group received Persantine/aspirin combination for 12 weeks, then aspirin alone for 12 weeks; the other group received aspirin the first 12 weeks, then the combination for the second 12 weeks. Effectiveness was determined by observing differences in number of angina attacks and nitroglycerin tablets ingested, platelet survival time, duration of exercise, and heart rate X systolic blood pressure product at end of exercise.

Data were analyzed from eight patients in the group that received the combination first and from six patients in the group that received only aspirin first. There were small but statistically significant differences favoring the combination over aspirin alone in mean angina attacks (8.2/week vs. 10.4/week, $p=0.032$) and in mean nitroglycerin tablets ingested (10.1/week vs. 13.0/week, $p=0.023$). There were no statistically significant differences between the combination and aspirin alone in duration of treadmill exercise or heart rate X systolic blood pressure at end of exercise; in fact the aspirin group was numerically favored.

This small study does not provide evidence of the effectiveness of Persantine in the long term treatment of chronic angina pectoris. The small differences in angina rate and nitroglycerin use favoring the Persantine group were not supported by results from exercise tolerance testing, which did not favor Persantine at all. Moreover, the angina rate and nitroglycerin use data cannot be properly evaluated as no baseline data were provided. It is impossible to assess comparability of the treatment groups at baseline. There was, moreover, no between-treatment washout to allow assessment of period effects. Thus, the study does not, on its face, show improved exercise tolerance, and it cannot be considered adequate and well controlled because the methods of observation and analysis of the results are deficient (21 CFR 314.126(b) (6) and (7)).

*D. The Igloe Study*

Max C. Igloe, M.D., conducted a double-blind, parallel group study to compare the effectiveness of Persantine with placebo in the treatment of angina pectoris in 48 patients who observed and recorded changes in their nitroglycerin requirements, number of angina attacks, severity of chest pain, and distance walked before the onset of pain ("Treatment of Angina Pectoris with Dipyridamole: A Double-Blind Study," *Journal of the American Geriatrics Society*, 18:233–41, 1970).

Fifty-six male and female patients with moderate to severe angina requiring three or more nitroglycerin tablets per day were randomly assigned to one of two groups. For 6 months, one group received Persantine (2 X 25 mg four times a day (q.i.d.)) and the other received matching placebo tablets (2 q.i.d.). The patients recorded their nitroglycerin requirements, number of anginal attacks, tolerated walking distance, and degree of chest pain in a diary. Baseline values were recorded while the patients were on previous therapy. Blood pressure and pulse were recorded, and the diary entries were summarized by the physician at each monthly visit.

Of the 56 patients who entered the study, 48 (26 on Persantine and 22 on placebo) received treatment for at least 2 months (mean 125 days). Only 27 patients completed 6 monthly visits after baseline. Three patients dropped out during the baseline period, 11 more dropped out (9 from the Persantine group and 2 from the placebo group) after indicating some improvement, and 15 more dropped out (3 from the Persantine group and 12 from the placebo group) because of lack of effectiveness of their assigned treatments.

Results from the 48 patients who received at least 2 months of treatment were evaluated. At baseline, the number of angina attacks and the intake of nitroglycerin tablets were significantly less in the Persantine group than in the placebo group. Although there was an attempt to account for these differences in the data analyses, the comparability of the treatment groups and initial randomization are placed in doubt (21 CFR 314.126(b)(4)). The frequency of angina attacks was reduced by 50 percent or more in 8 of the 26 patients who received Persantine (30.8 percent), versus 2 of the 22 placebo patients (9.1 percent). Only one patient in the Persantine group (and none in the placebo group) had improvement greater than 75 percent. From the beginning to the end of the study, there was a 43 percent reduction in angina attacks in the Persantine group versus a 32 percent reduction in the placebo group. This difference is statistically significant ($p=0.0003$). The differences between the groups for each month were statistically significant in the second, third, and fourth months, but not in the first month.

Similarly, from the beginning to the end of the study, there was a 43 percent reduction in nitroglycerin use in the Persantine group and a 24 percent reduction in the placebo group. This difference also was statistically significant ($p=0.0001$). Also, the differences between the groups were statistically significant in the second through the sixth months, but not in the first month.

Exercise tolerance was measured by the number of blocks that could be walked without chest pain, according to the patient. In patients with a previous myocardial infarction, the number of blocks tolerated by those in the Persantine group was significantly greater than the number tolerated by those in the placebo group in the second, third, and fourth months of treatment. In patients without a previous myocardial infarction, the differences between the number of blocks tolerated by those in the Persantine group and by those in the placebo group were not statistically significant.

At the beginning of the study, all patients had moderate to severe chest pain. At the end of the study, significantly more partients in the Persantine group (65 percent) had mild or no chest pain than in the placebo group (9 percent). In the Persantine group, 69 percent had decreased pain, while 18 percent of patients in the placebo group had decreased pain. Furthermore, at every month throughout the study, the number of patients reporting mild or no chest pain was significantly greater in the Persantine group than in the placebo group.

The data provide some support for an effect of Persantine on the frequency of angina attacks and nitroglycerin intake. Nonetheless the study cannot be considered strongly supportive. Despite attempts to account for it in the data analysis, the significant difference in the number of angina attacks and in nitroglycerin consumption between the Persantine and placebo groups at baseline casts doubt on the comparability in the test and control groups of pertinent variables such as severity and duration of the disease (21 CFR 314.126(b)(4)).

Furthermore, all of the parameters, including exercise tolerance, were observed and recorded by the patients themselves and no objective exercise test was performed to confirm those subjective findings; this is not an adequate method of assessing exercise tolerance (21 CFR 314.126(b)(6)). The reported effect on exercise tolerance, moreover, was confined to a post hoc chosen subset of patients, those with previous infarction, not the entire study group. Such after-the-fact analyses are susceptible to bias (21 CFR 314.126(b)(5)) and, in any case, the

subsets require that there be a correction in the statistical analysis for multiple endpoints (21 CFR 314.126(b)(7)). No such correction was made.

*E. The Becker Study*

Marvin C. Becker, M.D., conducted a double-blind, paralle group study of the safety and effectiveness of Persantine versus placebo in reducing angina attacks and nitroglycerin requirements in 27 patients (published in *The Journal of Newark Beth Israel Hospital,* 18(2):88, 1967).

Originally, 34 patients were observed for a 1- to 2-month placebo baseline period. Of these, 27 patients (19 males and 8 females) were selected based on the frequency of angina attacks (at least 15 per month) and their reliability in keeping adequate records; all but 5 patients had a previous myocardial infarction. The patients were randomly assigned to receive either Persantine (3 X 25 mg t.i.d.) or matching placebo tablets (3 t.i.d.). The duration of active treatment ranged from 13 days to approximately 8 months; the mean was 4.7 months.

At baseline, the patients in the Persantine group had higher frequencies of angina attack (a mean of 2.38 per day versus 1.47 per day for placebo) and nitroglycerin intake (a mean of 2.80 per day versus 1.49 tablets per day for placebo). These differences are large, although they are not statistically significant. By the last month of treatment, the median change from baseline was −.61 attacks per day for the Persantine group, versus −.06 attacks per day for the placebo group. This difference is statistically significant (p=.0494). Similarly, the median changes for nitroglycerin requirements were −.70 tablets per day for the Persantine group versus no change for the placebo group, a significant difference (p=.0143).

The study is not adequate and well controlled for several reasons. The baseline differences between the Persantine and placebo groups in frequency of angina attacks and nitroglycerin requirements, while not statistically significant, are large, and cast doubt on the comparability in the test and control groups of pertinent variables such as severity of the disease (21 CFR 314.126(b)(4)). The methods of assessment of patients' response are not reliable because no objective exercise test was performed to confirm subjective results (21 CFR 314.126(b)(6)). Moreover, the duration of active treatment of the subjects, broken into 1-month intervals, ranged from 1 month to 9 months. The patient population was distributed widely throughout that range, so that no more than three patients received drug or placebo for each of the various lengths of treatment (such as 1 to 2 months, 2 to 3 months, 3 to 4 months, etc.). Moreover, the Persantine group, on average, was observed for a longer period of time than the placebo group (6.1 months vs. 4.5 months); as angina rates often decline over time in the course of a study this is a serious lack of comparability between the two groups (21 CFR 314.126(b)(4)). Because the study is not adequate and well controlled, the findings cannot be considered substantial evidence of the effectiveness of Persantine.

*F. Conclusion*

The firm submitted the results of four clinical studies intended to support the effectiveness of Persantine for the treatment of angina pectoris:

1. The results of the Winter study, which included modern exercise testing, did not demonstrate any difference between Persantine and placebo in reducing the number of angina attacks, nitroglycerin tablets required, or in extending the duration of exercise that could be tolerated.

2. The results of the Steele study showed a small, but statistically significant reduction in the numbers of angina attacks and nitroglycerin tablets required by patients receiving Persantine in combination with aspirin versus those receiving aspirin alone. This small, subjective benefit was not confirmed by the results of the modern exercise testing procedures. The study cannot be considered as providing evidence of effectiveness.

3. Although the data from the Igloe study showed statistically significant changes in subjective measurements of frequency of angina attacks, nitroglycerin intake, and reported an increase in exercise tolerance in a subset of patients, the study is not an adequate and well-controlled trial: (a) There were significant differences at baseline in the frequency of angina and nitroglycerin use, calling the comparability of the treatment groups into question and, (b) the exercise tolerance was evaluated wholly by patient reporting rather than a standardized exercise protocol. Moreover, the only favorable exercise tolerance finding was reported for a post hoc subset of patients, rather than the entire population, an analysis that is subject to bias.

4. The Becker study reported a statistically significant reduction from baseline in frequency of angina attacks and nitroglycerin use in patients receiving Persantine. The study is not considered adequate and well controlled, however, because there was a substantial difference between the Persantine and placebo groups in angina frequency and nitroglycerin use at baseline. There was no attempt to measure exercise tolerance. Furthermore, there were widely variable durations of treatment, with the Persantine group treated longer on the average, an important lack of comparability between the two groups.

Therefore, the Acting Director of the Center for Drugs and Biologics concludes that the data submitted do not constitute substantial evidence that Persantine (dipyridamole) is effective for long term therapy of chronic angina pectoris.

**III. Revocation of exemption and opportunity for hearing**

Adequate time has been allowed for the design and conduct of acceptable studies to demonstrate the effectiveness of dipyridamole in the long-term treatment of chronic angina pectoris. Accordingly, the Acting Director of the Center for Drugs and Biologics hereby revokes the temporary exemption granted to drug products containing dipyridamole by the December 4, 1972 notice.

On the basis of all the data and information available to him, the Acting Director of the Center for Drugs and Biologics is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and 21 CFR 314.126(b) demonstrating the effectiveness of dipyridamole for long term therapy of chronic angina pectoris.

Notice is given to the holders of the new drug applications listed above, and to all other interested persons, that the Acting Director of the Center for Drugs and Biologics proposes to issue an order under section 505(e) of the act, withdrawing approval of the new drug applications and all amendments and supplements thereto insofar as they provide for the indication lacking substantial evidence of effectiveness (long term therapy of chronic angina pectoris), on the ground that new information before him with respect to dipyridamole, evaluated together with the evidence available to him at the time of approval of the new drug applications, shows there is a lack of substantial evidence that dipyridamole will have all the effects it is purported or

is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling of the drug products listed above.

In addition to the holders of the applications specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to the drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he or she manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he or she manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Division of Drug Labeling Compliance (HFN–310) at the address given above.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act (21 U.S.C. 321(p)), or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act and the regulations promulgated under it (21 CFR Parts 310 and 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to the drug product named above (21 CFR 310.6) and not the subject of a new drug application are hereby given an opportunity for a hearing to show why approval of the new drug application should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product named above and of all identical, related, or similar drug products not the subject of a new drug application.

The applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file: (1) On or before February 17, 1987 a written notice of appearance and request for hearing, and (2) on or before March 16, 1987 the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of a hearing, are contained in 21 CFR 314.200.

The failure of any applicant or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product labeled for the indication lacking substantial evidence of effectiveness may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug product from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under authority delegated to the Acting Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: January 9, 1987.

**Gerald F. Meyer,**

*Acting Deputy Director, Center for Drugs and Biologics.*

[FR Doc. 87–857 Filed 1–14–87; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

**National Advisory Council on the National Health Service Corps**

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue SW., Washington, DC 20201, Telephone (202) 245–6791. Copies may be obtained from Mr. Jeffrey Human, Executive Secretary, National Advisory Council on National Health Service Corps, Room 6–40, Parklawn Building, 5700 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2900.

Dated: January 12, 1987.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 87–911 Filed 1–14–87; 8:45 am]

BILLING CODE 4160–15–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

### Airport Lease Application; Double Four Corp., Nevada

**ACTION:** Notice of airport lease application N–45098.

**DATE:** January 5, 1987.

**FOR FURTHER INFORMATION CONTACT:** Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–3676.

**SUMMARY:** Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), Double Four

Corporation has applied for an airport lease for the following lands:

**Mount Diablo Meridian, Nevada**

T. 47 N., R. 30 E., Sec. 16
W½W½NE¼, SW¼SE¼NW¼NE¼, W½NE¼SW¼NE¼, NW¼SE¼SW¼NE¼, NW¼, NW¼NE¼NE¼SW¼, N½NW¼NE¼SW¼, N½N½NW¼SW¼, S½NW¼NW¼SW¼.

The area described contains 232.50 acres and is located in Humboldt County, Nevada. For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, 705 E. 4th St., Winnemucca, NV 89445.

**SUPPLEMENTARY INFORMATION:** Segregation of public lands. The application was filed on October 15, 1986, and on that date the land was segregated from all other forms of appropriation under the public land laws.

Dated: January 5, 1987.

**Frank C. Shields,**

*District Manager, Winnemucca.*

[FR Doc. 87-888 Filed 1-14-87; 8:45 am]

BILLING CODE 4310-HC-M

---

[UT-020-07-4341-02-2411]

## Salt Lake, UT, District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** District advisory council meeting.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Salt Lake District Advisory Council will be held on February 18, 1987, beginning at 9:30 a.m. at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah.

The agenda will include updates on wilderness, grasshoppers, the West Desert Pumping Project and the Randolph Stewardship Program. There will be an election of a new Chairperson and Vice Chairperson followed by discussion of current issues: Operation Fireaxe, land exchanges, AMAX, Rush Lake, wild horses, the Pony Express RMP/EIS and Utah Lake ownership. The meeting will adjourn at 3:30 p.m.

Anyone wishing to make a statement to the Council must notify the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119 at (801) 524-5348 before 4:30 p.m. on February 17. A time limit may be established per person by the District Manager.

**Deane H. Zeller,**

*Salt Lake District Manager.*

[FR Doc. 87-852 Filed 1-14-87; 8:45 am]

BILLING CODE 4310-DQ-M

---

[NV-943-07-4212-22]

## Nevada; Survey Plat Filings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plats of survey.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

**DATE:** Filings were effective at 10 a.m., on December 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Lacel Bland, Chief Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, (702) 784-5484.

**SUPPLEMENTARY INFORMATION:** The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada.

**Mount Diablo Meridian, Nevada**

T. 27 N., R. 51 E.—Dependent Resurvey
T. 28 N., R. 51 E.—Dependent Resurvey
T. 27 N., R. 52 E.—Dependent Resurvey
T. 28 N., R. 52 E.—Dependent Resurvey.

Those surveys were executed to meet certain administrative needs of this Bureau.

Dated: January 6, 1987.

**Robert G. Steele,**

*Deputy State Director, Operations.*

[FR Doc. 87-901 Filed 1-14-87; 8:45 am]

BILLING CODE 4310-HC-M

---

[WY 920 07 4121-11; W-103184]

## Invitation for Coal Exploration License; Cheyenne, WY

Laurance S. Rockefeller hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Sheridan County, Wyoming:

T. 58 N., R. 84 W., 6th Principal Meridian
Sec. 25: NE¼SW¼;
Sec. 26: NW¼NW¼, SE¼NW¼, NE¼SE¼, SW¼SE¼;
Sec. 27: NE¼SE¼;
Sec. 35: NW¼NW¼, SW¼SW¼.
Containing 320.00 acres.

All of the coal in the above land consists of unleased Federal coal, within the Powder River Basin known coal leasing area. The purpose of the exploration program is to conduct a study to determine the potential value of the underlying coal deposits for the JY Ranch easement exchange of the Federal coal in the Youngs Creek area.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-103184): Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and Bureau of Land Management, 951 North Poplar, Casper, Wyoming 82601.

This notice of invitation will be published in this newspaper once each week for two consecutive weeks beginning the week of January 19, 1987, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Laurance S. Rockefeller no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Laurance S. Rockefeller, Attn: George R. Lamb, Room 5600, 30 Rockefeller Plaza, New York, New York 10012, and the Bureau of Land Management, Wyomong State Office, Branch of Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43 code of Federal Regulations, § 3410.2-1(c)(1).

**F. William Eikenberry,**

*Associate State Director.*

[FR Doc. 87-886 Filed 1-14-87; 8:45 am]

BILLING CODE 4310-22-M

---

[OR 41597]

## Proposed Recreation and Public Purposes Lease

**AGENCY:** Bureau of Land Management, Interior (OR-080-07-4212-11: GP7-073).

**ACTION:** Notice of realty action.

The following described public land has been determined to be suitable and will be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 seq.):

**Willamette Meridian, Oregon**

T. 4N., R. 3 W.,
Sec. 7, that portion of the SE¼NE¼, NE¼SE¼ lying northerly of the East Fork Nehalem River and southerly of the Scappose-Vernonia Highway.
Containing 7.6 acres, more or less.

The subject land will be leased to Columbia County to be managed as a county park. The land is presently being used as a BLM recreation site and maintained by Columbia County under terms of a cooperative management agreement; therefore, the proposed action is consistent with the Westside

Salem District Management Framework Plan.

The lease will have a term of 25 years, the maximum allowable by law. Only standard stipulations will be added to the lease. No rental will be charged, as leases for recreational purposes are made without monetary consideration.

Detailed information concerning the lease, including the environmental assessment, is available for review at the Tillamook Resource Area Office or the Salem District Office.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease or classification of the land to the Salem District Manager, P.O. Box 3227, Salem, OR 97302. Any adverse comments will be reviewed by the Oregon State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Upon the effective date of classification, the land will be open to the filing of an application under the Recreation and Public Purposes Act by any interested, qualified applicant. If, after 18 months following the effective date of classification, an application has not been filed, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the Authorized Officer.

**Melvin E. Chase,**

*Acting District Manager.*

[FR Doc. 87–885 Filed 1–14–87; 8:45 am]

BILLING CODE 4310-33-M

---

[AZ–040–7–4212–12; A 22435]

## Realty Action; Designation of Public Lands To Be Included in State Exchange in Cochise County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Designation of public lands for transfer out of Federal ownership in exchange for lands owned by the State of Arizona; Extension of notice of realty action.

**SUMMARY:** BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

All of the public land in the following described sections and subdivisions is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716).

**Gila and Salt River Meridian, Arizona**

T. 12 S., R. 28 E.,
Sec. 13, S½S½, N½SE¼, SE¼NE¼;
Sec. 24, E½ NW¼.
T. 12 S., R. 29 E.,
Sec. 18, all;
Sec. 19, N½;
Sec. 30, N½;
Sec. 31, W½;
Sec. 32, SE¼.
T. 13 S., R. 29 E.,
Sec. 4, SW¼;
Sec. 5, N½, SE¼;
Sec. 8, N½, (S½ north of railroad);
Sec. 9, W½.
T. 14 S., R. 30 E.,
Sec. 24, W½, SE¼.
T 16 S., R. 31 E.,
Sec. 19, lot 14.

The lands described above comprise 4,483.68 acres, more or less, in Cochise County.

The above described lands will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the State of Arizona or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

Final determination of disposal will await completion of environmental analyses.

On Page 16357 of Vol. 50, No. 80 of the **Federal Register** published April 25, 1985, the Safford District published a Notice of Realty Action for serial number A 20347. This notice segregated the subject public lands for a period of two years. Upon publication of this notice that segregation will be extended through April 25, 1988.

**DATE:** For a period of 45 days from March 2, 1987, interested parties may submit comments to the Safford District Manager, 425 E. 4th Street, Safford, Arizona 85546.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the exchange is available at the Safford District Office.

Dated: January 8, 1987.

**Vernon L. Saline,**

*Acting District Manager.*

[FR Doc. 87–884 Filed 1–14–87; 8:45 am]

BILLING CODE 4310-32-M

---

## Minerals Management Service

## Development Operations Coordination Document; Tenneco Oil Exploration and Production

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4136, Block 526–L, Matagorda Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

**DATE:** The subject DOCD was deemed submitted on January 6, 1987.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 8, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–894 Filed 1–14–87; 8:45 am]

BILLING CODE 4310-MR-M

## Procedures for Determining Natural Gas Value for Royalty Purposes

**AGENCY:** Minerals Managment Service (MMS), Interior.

**ACTION:** Notice of proposed modification to Notice to Lessees-5.

**SUMMARY:** The Minerals Managment Service (MMS) is proposing to change the effective date of the recently adopted modifications to Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL–5). These modifications published in the **Federal Register** on July 25, 1986 (51 FR 26759), prescribe the procedures to be used to determine the value of natural gas production for royalty purposes. No other changes to NTL–5 are proposed.

**DATE:** Comments must be received on or before February 17, 1987.

**ADDRESS:** Comments should be sent to: Minerals Managment Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 651, Denver, Colorado 80225, Attention: Dennis Whitcomb.

**FOR FURTHER INFORMATION CONTACT:** Dennis Whitcomb, telephone: (303) 231–3432, (FTS) 326–3432.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 25, 1986 (51 FR 26759), MMS modified Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL–5). The purpose of the modifications was to permit MMS to use the full range of its authority under the royalty valuation regulations in 30 CFR Part 206 when valuing natural gas. The changes allow MMS to consider market conditions and other factors, rather than the automatic application of only one valuation criterion.

In the Notice of Proposed Modification to NTL–5 (51 FR 260, January 3, 1986), MMS specifically asked for comment on whether the changes should be made retroactive. Comment was requested on this issue because MMS had recognized that the changes in the gas market which necessitated the modification to NTL–5 actually began to occur long before. Over 50 comments were received on this issue (see discussion of comments at 51 FR 26764–26765), and after consideration of these comments, MMS decided at that time not to make the modifications retroactive.

Since the conclusion of that rulemaking, MMS has continued to analyze the retroactivity issue. In addition, MMS has received many complaints from royalty payors that application of the original provisions of NTL–5 to gas production during the period from 1982 to 1986, leads to results that are, in many instances, unreasonable and contrary to the purpose of the Mineral Lands Leasing Act of 1920 and other mineral leasing laws appliable to onshore Federal and Indian leases. Specifically, it has been stated by at least one commenter that under Section I.A.2. of the original NTL–5 which establishes the value, for royalty purposes, of certain interstate gas as the Federal Energy Regulatory Commission (FERC) ceiling price, value may be six to eight times as high as the price the lessee actually realized from sales of its gas. In such a case, the result would be that the producer would be required to pay in royalties almost all of its proceeds from the sale of the gas. In other situations, the FERC ceiling price may be two to three times the price at which such gas actually can be sold. Although MMS recognizes that such disparities between royalty values established under section I.A.2. of NTL–5 and the price at which the lessee can maket its gas did not occur in all situations, it is sufficiently prevalent that MMS is reconsidering whether or not the recently adopted changes to NTL–5 should be made retroactive to an earlier date.

The MMS has long maintained that the value for royalty purposes may exceed a lessee's proceeds from the sale of the gas, and this principle has been upheld in a number of cases. *Continental Oil Co.* v. *U.S.*, 184 F.2d 802 (9th Cir. 1950); *U.S.* v. *Ohio Oil Co.*, 163 F.2d 633 (10th Cir. 1947). However, the Cases also require that the royalty values established be "reasonable." During the period May 1, 1982, to August 1, 1986, application of NTL–5 may result in the establishment of royalty values for some gas production which could be considered to be unreasonable. By way of illustration, there may be situations where, because of market conditions, all the gas production in a field or area may be sold at a price significantly below the FERC ceiling price. Rather than be required to automatically apply the provisions of NTL–5 in such situations, MMS should have the flexibility to consider other valuation criteria to determine a reasonable royalty value. Although the royalty value so determined could be, and in many cases would be, in excess of the proceeds received by the lessee, those values would more closely reflect actual market conditions than would a FERC ceiling price which may be in excess of what such gas actually can sell for in the market.

The modifications NTL–5, if made retroactive, would give MMS the necessary flexibility under its regulations to establish reasonable royalty values. In many instances, these values would continue to be the FERC ceiling prices. However, in situations where the FERC ceiling price no longer reflects a reasonable value, MMS could establish a different value consistent with the regulations in 30 CFR 206.103.

Therefore, MMS is proposing to change the effective date of the NTL–5 modifications to an earlier date. However, MMS is proposing that the retroactive date be different for the various categories of gas regulated under the Natural Gas Policy Act (NGPA) by the Federal Energy Regulatory Commission (FERC). The modification to NTL–5 for establishing royalty values would not be effective until the date that a specific category of gas began to be subject to so-called "market-out" clauses whereby the purchaser of the gas was able, because of market conditions, to force the price of gas below the FERC ceiling price. For example, for NGPA category 107 gas, the effective date of modification of NTL–5 would be May 1, 1982. However, the original terms of NTL–5 would continue to apply to the other categories of gas until the respective dates as proposed in the following table:

The effective dates would be as follows:

| NGPA category | Effective date of modification |
|---|---|
| 107 16 U.S.C. 3317 | May 1, 1982 |
| 108 16 U.S.C. 3318 | Mar. 1, 1983 |
| 102, 105 16 U.S.C. 3312, 3315 | Jul. 1, 1983 |
| 103 16 U.S.C. 3313 | Jan. 1, 1985 |
| 104, 106, and 109 16 U.S.C. 3314, 3316, and 3319. | Mar. 1, 1985 |

As noted earlier, after the effective date of modification, gas would be valued in accordance with the provisions of 30 CFR part 206. However MMS could, but would not be required to, accept the contract price as value for royalty purposes. For example, if in July 1982, lessees A and B are marketed out to a price 50 cents below the FERC ceiling price (which is similar to the market-outs of other sellers in the field or area) and lessee C markets out to a price two dollars below the FERC ceiling, MMS likely would accept the contract price as value for lessees A and B but not for C. MMS also would apply close scrutiny to non-arm's-length contracts to determine whether the lower prices actually were the result of market forces.

Commenters are requested to address the propriety of the above-listed

effective dates for the retroactive modifications. Commenters also are requested to identify whether or not any other criteria should be applied such as limiting the modifications to arm's-length contracts.

MMS also would like commenters to address the issue of whether or not the retroactive changes to NTL-5 should apply to Indian leases. For the past several years, a few lessees have paid royalties at the original NTL-5 value, generally as the result of audits. If the modifications to NTL-5 are made retroactive, some of these lessees may be entitled to a refund which would require recoupment from the Indian lessors. MMS would like comments to help it assess the extent of such situations and the impact caused Indian lessors if recoupments occur. As an alternative, if MMS does apply the NTL-5 modifications retroactively to Indian leases, then it is proposed that any recoupment be effected equally over a 12-month period so as to minimize any hardship, subject to the existing limitation that a recoupment, for individual allottees, cannot exceed 50 percent of a current month's royalty liability.

**II. Procedural Matters**

*Executive Order 12291 and the Regulatory Flexibility Act*

The Department has determined that this rule is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The net effect of this proposal will result in some reduction in royalty revenues but is not expected to be significant. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act of 1980*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

*National Environmental Policy Act of 1969*

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

Dated: December 30, 1986.

**James E. Cason,**

*Acting Assistant Secretary—Land and Minerals Management.*

[FR Doc. 87-928 Filed 1-14-87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 30952]**

### New Orleans Terminal Company—Contract To Operate Properties of Louisiana Southern Railway Company; Exemption

New Orleans Terminal Company (NOT) and Louisiana Southern Railway Company (LAS) have filed a notice of exemption for the operation under contract of LAS' properties[1] by NOT, beginning December 31, 1986. NOT and LAS are wholly owned subsidiaries of The Alabama Great Southern Railroad Company (AGS) [2].

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Use of this exemption is subject to the employee protective conditions in *Norfolk & W. Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke this exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Nancy S. Fleischman, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

Dated: January 5, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-898 Filed 1-14-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The properties consist of approximately 21 miles of railroad line in and around New Orleans, LA, serving 7 customers and 2 team tracks.

[2] AGS is controlled by Southern Railway Company which in turn is controlled by Norfolk Southern Corporation.

**[Finance Docket No. 30959]**

### R.J. Corman Railroad Corporation—Exemption Acquisition and Operation—Certain Lines of CSX Transportation, Inc.; Exemption

R.J. Corman Railroad Corporation (Corman) has filed a Notice of Exemption to acquire and operate 20 route miles of line of CSX Transportation, Inc. from Bardstown Junction, KY (milespost 22.07) to Wickland, KY (milepost 42.00). Any comments must be filed with the Commission and served on: Deborah A. Phillips, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797, (202) 628-2000 and Richard W. Bond, Senior Manager—Shortline Marketing, CSX Transportation, Inc. 500 Water Street, Jacksonville, Florida 32202, (904) 359-1156. This transaction will also involve the issuance of securities by Corman. Because Corman will be a Class III carrier, the issuance of these securities will be an exempt transaction under 49 CFR 1175.1 (51 FR 4928 (February 10, 1986)).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 30, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-899 Filed 1-14-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to Clean Air Act; SENCO Products, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 5, 1987, a proposed consent decree in *United States* v. *SENCO Products, Inc.*, Civ. No. C-1-87-009, was lodged with the United States District Court for the Southern District of Ohio. This agreement resolves a judicial enforcement action brought by the United States against SENCO Products, Inc. for violations of the Clean Air Act at its coating facility in Cincinnati, Ohio.

The Consent Decree achieves compliance with the Ohio SIP in the following manner. First, SENCO has

completed the reformulation of its retention coating, so that the VOC content of the coating complies with the Ohio SIP VOC limits. SENCO has also completed the installation of twenty new "collator" machines which have replaced ten coating machines formerly used to apply the retention coating. The new collator coating system meets the 2.77 1b/gal. VOC emission limit for new sources.

SENCO also will install an incinerator to control emissions from its four bandline machines. SENCO will demonstrate final compliance with Ohio SIP Rule 3745-21-09(U)(1) by January 21, 1987. The Consent Decree provides for the payment of a $40,000 civil penalty, establishes monitoring and reporting requirements, and provides for stipulated penalties for violations of the Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. SENCO Products, Inc.*, D.J. Ref. No. 90-5-2-1-868.

The proposed Consent Decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

*U.S. Attorney*

U.S. Attorney, Southern District of Ohio, 220 U.S. Post Office & Courthouse, 5th and Walnut Streets, Cincinnati, Ohio 45202

*EPA*

Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

A copy of the Consent Decree may be examined at the Environment Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-892 Filed 1-14-87; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### National Cooperative Research Act of 1984—NAHB Research Foundation

In the matter of National Cooperative Research Act of 1984; Smart House Project.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), the NAHB Research Foundation, Inc. has filed a notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Smart House Project and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stage by separate agreements at each stage. The following parties have signed agreements to fund or otherwise participate in the first stage organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.
BrinTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Carrier Corporation
Challenger Elecrical Equipment Corp.
Dukane Corpration
E. I. DuPont de Nemours & Company (Inc.)
Emerson Electric Co.
Gas Research Institute
General Electric Company
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corporation
NOMA Incorporated
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Control Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
SLATER ELECTRIC, INC.
Smart House Development Venture, Inc.
Sola Basic Industries, Inc.
Southwire Company
Square D Company
Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The following entities are serving as advisors to the venture:

AgipPetroli
American Gas Association
Bell Canada
Bell Communications Research, Inc.
Copper Development Association Inc.
The Dayton Power and Light Company
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
National Association of Home Builders
Ontario Hydro
Professional Builder
Southern California Edison Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable applicances, heating and cooling equipment, utility meters and home electrical and electric products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

The principal business address of the Smart Home Project is P.O. Box 1627, Rockville, Maryland 20850.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 87-859 Filed 1-14-87; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

### John R. Dixon, M.D. Revocation of Registration and Denial of Application

On November 20, 1986, the Deputy Assistant Administrator, Office of Deversion Control, Drug Enforcement Administration (DEA) directed an Order

to Show Cause to John R. Dixon, M.D. (Respondent) of 1005 Brookfield Avenue, Brookfield, Missouri 64628. The Order to Show Cause sought to revoke his DEA Certificate of Registration AD3778404 and to deny his application, executed on June 12, 1986, for renewal of such registration. The proposed action was predicated on Respondent's lack of authorization of handle controlled substances in the State of Missouri.

By letter dated December 16, 1986, Respondent specifically waived his opportunity for a hearing and instead submitted a written statement regarding his position on the matters of fact and law involved pursuant to 21 CFR 1301.54(c). The Administration enters his final order in this matter based on the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that on February 21, 1986, Respondent voluntarily surrendered his Missouri Controlled Substances Registration Certificate. Consequently, Respondent is without authority to handle controlled substances in the State of Missouri.

The Administrator finds that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the state in which he practices. See, 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See, *George S. Heath, M.D.*, Docket No. 86-24, 51 FR 26610 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); *Emerson Emory, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Agostino Carlucci, M.D.*Docket No. 82-20, 49 FR 33184 (1984).

In his written statement, Respondent stated that he did not voluntarily sign the form whereby he surrendered his controlled substance privileges in Missouri. The Administrator concludes that this is not the proper forum to raise such an issue. The fact remains that Respondent is not currently authorized to handle controlled substances in Missouri and therefore he cannot be registered with the Drug Enforcement Administration.

Having considered the record in this matter, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked and his application for renewal denied due to his lack of authorization to handle controlled substances in the State of Missouri. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration AD3778404, prevously issued to John R. Dixon, M.D., be, and it hereby is revoked. In addition, the Administrator orders that Respondent's application, executed on June 12, 1986, for renewal of DEA Certificate of Registration AD3778404, be, and it hereby is denied. This order is effective January 15, 1987.

Dated: January 9, 1987.

**John C. Lawn,**

*Administrator.*

[FR Doc. 87-861 Filed 1-14-87; 8:45 am]

BILLING CODE 4410-09-M

---

**[Docket No. 86-76]**

## Kenneth B. Rehm, D.P.M., Beachwood, OH; Hearing

Notice is hereby given that on September 5, 1986, the Drug Enforcement Administration, Department of Justice, issued to Kenneth B. Rehm, D.P.M., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AR9623605, an deny his application, executed on May 1, 1986, for renewal of such registration as a practitioner under 21 U.S.C. 823(f) and for transfer of such registration from Margate, Florida to Beachwood, Ohio.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 11:00 a.m. on Thursday, January 22, 1987, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: January 9, 1987.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87-863 Filed 1-14-87; 8:45 am]

BILLING CODE 4410-09-M

---

## England Pharmacy; Revocation of Registration

On November 4, 1986, the Administrator of the Drug Enforcement Administration (DEA) issued to England Pharmacy, 104 Stuttgart Highway, England, Arkansas 72046, an Order to Show Cause proposing to revoke its DEA Certificate of Registration, BE 0103262, and to deny any pending applications for the renewal of such registration. The Order to Show Cause alleged that the continued registration of England Pharmacy would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). Additionally citing his preliminary finding that England Pharmacy's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration BE0103262 during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served on Johnny Bunch, the owner and pharmacist of England Pharmacy, on November 5, 1986. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), England Pharmacy is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that based on information that contolled substancs were being illegally diverted from England Pharmacy, officers of the Arkansas State Police-diversion Investigation Unit conducted an audit at the pharmacy of ten controlled substances. The audit period covered October 3, 1985, through April 18, 1986, and revealed significant shortages of some of the substances audited. As a result of this information, on June 16, 1986, Johnny Bunch was arrested and charged with three counts of illegal distribution of controlled substances and one count of improper recordkeeping in violation of the laws of the State of Arkansas.

On October 3, 1986, officers of the Arkansas State Police-Diversion Investigation Unit returned to England Pharmacy and conducted a second audit of various controlled substancs. The audit period covered April 18, 1986, through October 3, 1986. This audit revealed further shortages of conrolled substances. On October 3, 1986, Johnny Bunch was again arrested and charged with three counts of illegal distribution of controlled substances and one count of imporper recordkeeping in violation of the laws of the State of Arkansas.

Officers of the Arkansas State Police-Diversion Investigation Unit conducted interviews of former employees of England Pharmacy, including Johnny Bunch's estranged wife, and customers or the pharmacy. These interviews revealed that Johnny Bunch took controlled substances from England Pharmacy for his personal use; that he dispensed controlled substances to customers other than pursuant to legitimate prescriptions or other lawful authorization; that he forged and altered prescriptions to cover shortages that occurred as a result of his illegal dispensing practices; that he authorized employees who were not registered pharmacists to fill prescriptions for

controlled substances; and that he failed to provide adequate security for the controlled substances maintained at the pharmacy.

The Administrator concludes that there is ample evidence to indicate that the continued registration of England Pharmacy is inconsistent with the public interest. 21 U.S.C. 824(a)(4). In June 1986, Johnny Bunch was arrested and charged with controlled substance violations. In October 1986, Johnny Bunch was again arrested and charged with controlled substance violations. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator concludes that the registration must be revoked.

Accordingly, the Administator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration BE0103262, previously issued to England Pharmacy, be, and it hereby is revoked. This order is effective immediately.

When the Order to Show Cause/ Immediate Suspension was served on England Pharmacy, all controlled substances possessed by the pharmacy under the authority of his then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until [30 days after date of publication] or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forefeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: January 9, 1987.

John C. Lawn,

*Administrator.*

[FR Doc. 87-862 Filed 1-14-87; 8:45 am]

BILLING CODE 4410-09-M

## Immigration and Naturalization Service

## Preliminary Advice Pending Implementation of the Immigration Reform and Control Act of 1986

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of advice.

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to provide preliminary advice to members of the public, particularly employers and aliens, as to what to do and not to do pending the implementation of the Immigration Reform and Control Act of 1986.

On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub. L. 99-603 ("IRCA"). This legislation reflects both a resolve to strengthen law enforcement to control immigration and humanitarian concerns of the Nation for certain persons who have been illegally residing in the United States. The theme of this legislation is that the key to maintaining the immigration tradition of the United States is the firm, fair enforcement of laws designed to encourage the continued flow of legal immigrants, while closing the back door to illegal entry.

This new law contains a number of provisions which will become effective at a later date. Particularly, certain aliens will be eligible to apply for legalization if they have continuously resided unlawfully in the United States since January 1, 1982. Other aliens will be eligible to apply for special agricultural worker ("SAW") status if they have performed seasonal agricultural services in the United States during a certain time period. These two categories of aliens will be eligible to apply for the benefits under IRCA either on May 5, 1987 or June 1, 1987, respectively. Pending the beginning of the application periods, INS is making a concerted effort to provide general advice to these eligible aliens relating to what to do and what not to do.

The new law also serves notice to employers for the first time that they cannot continue to hire illegal aliens. IRCA provides an orderly phase-in approach for implementing the employer sanctions provisions. Particularly, the law provides a six-month education period for employers, during which time no penalties will apply. Pending the promulgation of regulations implementing the employer sanctions provisions, INS is making a concerted effort to generally advise employers as to what to do and what not to do.

Accordingly, INS is advising employers and aliens eligible for the benefits under IRCA as follows:

### Advice to Employers

1. Do not discharge present employees or refuse to hire new employees based on foreign appearance or language.

2. Be alert for compliance information from the government during the six-month education period.

3. State intention to hire only authorized workers.

4. Inform all newly hired employees that when guidelines are received they must provide proof of work eligibility.

5. Assist applicants for legal status under the legalization or agricultural worker programs who request documentation of employment history to help prove their eligibility. Such documentation submitted by employers in support of legalization or agricultural worker applications cannot be used by the Government against the employer for possible violations of law which may be revealed, except for fraud in the application process.

6. Employers are not subject to civil or criminal sanctions for the hiring of unauthorized workers which occurred prior to November 6, 1986.

7. Employers are not subject to criminal or civil penalties for hiring unauthorized workers during the education period running from November 6, 1986 to May 31, 1987. However, once employer sanctions begin to be enforced on June 1, 1987, an employer should not continue to employ any employees hired during the education period UNLESS the employer has compiled with the verification requirements as will be specified by regulations.

8. Employers who hire workers to perform seasonal agricultural services will not be subject to sanctions during the 18-month application period for special agricultural worker ("SAW") status. However, those employers who have recruited unauthorized aliens outside the United States may be subject to sanctions.

### Advice to Aliens

1. Watch and listen for information regarding making contact with local voluntary agencies, such as churches, local community or ethnic groups, or an attorney for assistance or information in applying for legalization. INS will designate qualified organizations authorized to provide assistance.

2. Begin compiling documentary information that will help prove that you entered the United States before January 1, 1982, and that you have resided unlawfully in the United States since such date and through the date you file your application. The documents may include but are not limited to, employment-related documents, utility payments, school or medical records, rent receipts. If you intend to apply for the special agricultural worker ("SAW") status, begin compiling documentary

information to prove that you performed seasonal agricultural services for at least 90 days in the United States between May 1, 1985 and May 1, 1986.

3. Do not Attempt to Prove Residence by Submitting False Documents. The law imposes severe criminal penalties including fines and imprisonment on aliens who submit false documents. INS will closely check documents for possible fraud violations.

4. Only INS can legalize your status. Beware of persons charging fees and promising that they can obtain legalization benefits for you.

5. The application period for aliens who may be eligible to apply for legalization on the basis that they have resided unlawfully since January 1, 1982 begins on May 5, 1987. An alien will have a one-year period within which to apply.

However, an alien who has been apprehended or served with an Order to Show Cause after November 6, 1986, must apply within thirty (30) days of the beginning of the application period or within thirty (30) days of the apprehension or the issuance of such order, whichever day is later.

6. The application period for aliens who may be eligible to apply for special agricultural worker ("SAW") status begins on June 1, 1987. An alien will have an 18-month period within which to apply. However, an alien has been apprehended or served with an Order to Show Cause after Novermber 6, 1986, must apply within thirty (30) days of the beginning of the application period or within thirty (30) days of the apprehension or the issuance of such order, whichever day is later.

7. If you are prima facie eligible for legalization or have a nonfrivolous claim for SAW status do not travel abroad unless you have received advance permission from the INS to do so. Advance authorization will be granted by INS district offices in cases where an eligible alien has to travel abroad for a legitimate emergency or humanitarian purpose such as that occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

8. Aliens currently under an order of deportation or voluntary departure will not be required to leave the United States if they have a prima facie claim of eligibility for legalization or a nonfrivolous claim to SAW status.

9. The legalization application process, including the procedures for advance travel authorization, will not be used as an enforcement device except to detect fraud or misrepresentations during the application process.

**Reservation**

This notice is set forth solely to provde general advice to the members of the public. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

Dated: January 12, 1987.

**Mark W. Everson,**

*Executive Associate Commissioner.*

[FR Doc. 87-920 Filed 1-14-87; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Badlands Shot Hole Service et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivisions of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 26, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 26, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 5th day of January 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| (Petitioner Union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Badlands Shot Hole Service (Company) | Dickinson, ND | 12/29/86 | 12/4/86 | TA-W-18,827 | Seismic the oil into the drilling holes. |
| Grace Bomac Drilling (Workers) | Williston, ND | 12/29/86 | 12/5/86 | TA-W-18,828 | Oil drilling. |
| Wisco Casing Industries (Workers) | Dickinson, ND | 12/29/86 | 12/5/86 | TA-W-18,829 | Oil pumps. |
| Conner Coating & Painting (Workers) | Odessa, TX | 12/29/86 | 11/24/86 | TA-W-18,830 | Treating oil storage tanks. |
| Sabine-Corporation (Workers) | Denver, CO | 12/29/86 | 12/18/86 | TA-W-18,831 | Oil and gas. |
| Triumph-LOR, Inc. (Workers) | Odessa, TX | 12/29/86 | 11/25/86 | TA-W-18,832 | Down hole oil tools. |
| Triumph-LOR, Inc. (Workers) | Lafayette, LA | 12/29/86 | 11/25/86 | TA-W-18,833 | Down hole oil tools. |
| Geosearch, Inc. (Workers) | Great Bend, KS 12/29/86 | 12/18/86 | TA-W-18,834 | Seismic data services. | |
| H & S Valve (Workers) | Odessa, TX | 12/29/86 | 12/17/86 | TA-W-18,835 | Compressor valves. |
| H & S Valve (Workers) | Corpus Christi, TX | 12/29/86 | 12/17/86 | TA-W-18,836 | Compressor valves. |
| H & S Valve (Workers) | Weatherford, TX | 12/29/86 | 12/17/86 | TA-W-18,837 | Compressor valves. |
| H & S Valve (Workers) | Baton Rouge, LA | 12/29/86 | 12/17/86 | TA-W-18,838 | Compressor valves. |
| Poly Bearing, Inc. (Workers) | Midland, TX | 12/29/86 | 12/17/86 | TA-W-18,839 | Repaired oil pumping units. |

APPENDIX—Continued

| (Petitioner Union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Consolidation Coal Co. (Jenkinjones #4) (UMWA) | McDowell Co., WV | 12/29/86 | 12/18/86 | TA-W-18,840 | Metallurgical coal. |
| Consolidation Coal Co. (Amonate #31) (UMWA) | Tazewell Co., WV | 12/29/86 | 12/18/86 | TA-W-18,841 | Metallurgical coal. |
| Beckley Coal Mining Co. (UMWA) | Glen Daniel, WV | 12/29/86 | 12/18/86 | TA-W-18,842 | Metallurgical coal. |
| Olga Coal Company (UMWA) | McDowell Co., WV | 12/29/86 | 12/18/86 | TA-W-18,843 | Metallurgical coal. |
| Renger Fuel Corp. (UMWA) | Beckley, WV | 12/29/86 | 12/18/86 | TA-W-18,844 | Metallurgical coal. |
| Schlumberger Well Services (Workers) | Midland, TX | 12/29/86 | 12/12/86 | TA-W-18,845 | Provides data on electrical responses from oil wells. |
| Western Oilfield Service, Inc. (Workers) | Midland, TX | 12/29/86 | 12/15/86 | TA-W-18,846 | Welding pipes for oil wells. |
| American Mud Logging (Workers) | Odessa, TX | 12/29/86 | 12/18/86 | TA-W-18,847 | Geological service to well digging companies. |
| Baker & Taylor Drilling Co. (Workers) | Amarillo, TX | 12/29/86 | 12/11/86 | TA-W-18,848 | Oil and gas exploration. |
| Bethlehem Supply (Workers) | Dickinson, ND | 12/29/86 | 12/5/86 | TA-W-18,849 | Sales steel pipes. |
| Bethlehem Supply (Workers) | Tioga, ND | 12/29/86 | 12/5/86 | TA-W-18,850 | Sales steel pipes. |
| Vanilla, Inc. (Workers) | Forest City, PA | 1/5/87 | 12/19/86 | TA-W-18,851 | Boys and girls sportswear. |
| Forest City Mfg. Co. Inc. (Workers) | Forest City, PA | 1/5/87 | 12/19/86 | TA-W-18,852 | Contract cutter of girl's sportswear. |
| Ultrawear Oil and Gas USA (Workers) | Houston, TX | 1/5/87 | 12/12/86 | TA-W-18,853 | Production of oil and gas. |
| Westland Oil Development Corp. (Workers) | Midland, TX | 1/5/87 | 12/16/86 | TA-W-18,854 | Oil and gas exploration. |
| St. Thomas Inc. (ILGNW) | Gloversville, NY | 1/5/87 | 12/15/86 | TA-W-18,855 | Manufactures small personal leather goods. |
| Premium Allied Tool Inc (Workers) | Owensboro, KY | 1/5/87 | 12/17/86 | TA-W-18,856 | Manufactures high precision stamping. |
| SHW Corporation (USWA) | Ansonia, CT | 1/5/87 | 12/15/86 | TA-W-18,857 | Rolls steel. |
| Harvey Industries, Inc. (UFWA) | Athens, TX | 1/5/87 | 12/15/86 | TA-W-18,858 | Televisions. |
| Farrel Corporation (USWA) | Ansonia, CT | 1/5/87 | 12/15/86 | TA-W-18,859 | Mixers, extruders, rolling mill machinery. |
| ADM Corn Sweeteners Div. of Archer Daniels Midland Co. (Workers). | Montezuma, NY | 1/5/87 | 12/17/86 | TA-W-18,860 | Corn sweeteners. |
| Kay Townes, Inc. (Workers) | Rome, GA | 1/5/87 | 12/8/86 | TA-W-18,861 | Television antennas and accessories. |
| Astoria Oil Services (Boilermakers) | Astoria, OR | 1/5/87 | 12/16/86 | TA-W-18,862 | Offshore oil drilling platforms. |
| Dix Steel Corporation (Iron workers) | Spokane, WA | 1/5/87 | 12/16/86 | TA-W-18,863 | Structural Steel. |
| Cummins and Walker Oil Co. Inc. (Workers) | Corpus Christi, TX | 1/5/87 | 12/20/86 | TA-W-18,864 | Oil and gas. |
| Amoco Production Co. North Cowden Production (Workers). | Odessa, TX | 1/5/87 | 12/16/86 | TA-W-18,865 | Oil and gas. |
| Cardinal Drilling (Workers) | Billings, MT | 1/5/87 | 12/9/86 | TA-W-18,866 | Oil drilling. |
| Knewaldt Glove Mfg. (Workers) | Oconto, WI | 1/5/87 | 12/5/86 | TA-W-18,867 | Leather-work gloves. |
| The Innovators (Workers) | Midland, TX | 12/12/86 | 12/5/86 | TA-W-18,868 | Blow-out preventers. |
| Body Lingo (Company | Waynesburg, PA | 1/5/87 | 12/29/86 | TA-W-18,869 | Physical fitness center. |

[FR Doc. 87-872 Filed 1-14-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18, 813]

## Pioneer Production Corp., Midland, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 22, 1986 in response to a worker petition received on December 19, 1986; and filed by the workers on behalf of employees at Pioneer Production Corporation, Midland, Texas.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any workers whose last separation occurred more than one year before the date of petition. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 7th day of January 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-873 Filed 1-14-87; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted by February 4, 1987.

**ADDRESSES:** Send comments to Mrs. Judy Egan, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464).

**FOR FURTHER INFORMATION CONTACT:** Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202-682-5464); from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests the reinstatement of a previously approved collection for which approval has expired. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Local Programs Applications Guidelines FY 1988.

OMB Number : 3135-0050

Frequency of Collection: One-time.

Respondents: Non-profit institutions and state or local governments.

Use: Guideline instructions and applications elicit relevant information from nonprofit organizations and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the

accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 46

Estimated Hours for Respondents to Provide Information: 992

**Murray R. Welsh,**

*Director, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 87-866 Filed 1-14-87; 8:45 am]

BILLING CODE 7537-01-M

## National Endowment for the Arts; National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on January 30-January 31, 1987, from 9:00 a.m.-5:30 p.m., and on February 1, 1987, from 9:00 a.m.-1:00 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 30, 1987, from 9:00 a.m.-5:30 p.m., and on January 31, 1987, from 9:00 a.m.-3:30 p.m. The topics for discussion will include Program Review and Guidelines for: Opera-Musical Theater, Music Ensembles, Arts in Education, Inter-Arts and the Endowment Fellows Program; Endowment Five-Year Planning; and State of the Arts Study.

The remaining sessions of this meeting on January 31, 1987, from 3:30 p.m.-5:30 p.m. and on February 1, 1987, from 9:00 a.m.—1:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency to grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(6) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: January 9, 1987.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 87-882 Filed 1-14-87; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-155]**

## Environmental Assessment and Finding of No Significant Impact; Consumers Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of section III.J of Appendix R to 10 CFR Part 50 to Consumers Power Company (CPC, the Licensee) for the Big Rock Point Plant located at the licensee's site in Charlevoix County, Michigan.

### Environmental Assessment

*Identification of Proposed Action*

The proposed action would grant an exemption from the requirements of section III.J of Appendix R to 10 CFR Part 50 which requires all areas required for operation of safe shutdown equipment, and in access and egress routes thereto, be provided with emergency lighting units with at least an 8-hour battery supply. The exemptions are technical since the licensee must demonstrate the ability to perform tasks required to operate equipment required for safe shutdown without emergency lighting units which meet the specific requirements of section III.J or provide an acceptable alternative for emergency lighting for all areas discussed above in which access and egress is required for safe shutdown.

*The Need for the Proposed Action*

To safely shut down the Big Rock Point Plant in the event of certain postulated fire scenarios, operators would need to leave the Service Building, Turbine Building and containment (i.e., power Block) and travel to the Alternate Shutdown Building (ASB), the Screenhouse, the Emergency Diesel Generator Building (EDGB), and/or the stand-by diesel generator.

Emergency lighting with at least an 8-hour battery supply has been installed along access and egress routes to and from safe shutdown equipment within the power block, as well as for operation of this equipment and equipment in the ASB, EDGB, and the screenhouse. Emergency lighting for access and egress to safe shutdown equipment outside the power block, and for operation of the stand-by diesel generator, however, has not been installed.

The proposed exemption is needed because literal compliance would not significantly enhance the safe shutdown capability at the Big Rock Point Plant and the portable battery powered lanterns are an equivalent alternative for meeting the intent of Appendix R.

*Environmental Impacts of the Proposed Action*

The proposed exemption would provide a degree of emergency lighting such that there is no increase in the risk of not achieving safe shutdown at the Big Rock Point Plant. Consequently, the probability of achieving safe shutdown has not been decreased and the post-accident radiological releases would not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to nonradiological impacts, the proposed exemption involves emergency lighting located within the restricted area as well as outside the restricted area as defined in 10 CFR Part 20. The proposed emergency lighting exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

*Alternative Use of Resources*

This action involves no use of resources beyond the scope of resources used during normal plant operation.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

### Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to the proposed action, see the licensee's letter dated July 1, 1986. This letter is

available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at North Central Michigan College, 1515 Harvard Street, Petoskey, Michigan 49770.

Dated at Bethesda, Maryland, this 8th day of January 1987.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, BWR Project Directorate #1, Division of BWR Licensing.*

[FR Doc. 87-947 Filed 1-14-87; 8:45 am]

BILLING CODE 7590-01-M

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission' regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, HF 601-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 1.114, "Guidance to Operators at the Controls and to Senior Operators in the Control Room of a Nuclear Power Unit." The revision is being developed to describe methods acceptable to the NRC staff for complying with amendments of 10 CFR Parts 50 and 55 that require the presence of an operator at the controls of a nuclear power unit and a senior operator in the control room.

This draft revision and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the draft guide (including the implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by March 27, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 12th day of January 1987.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 87-948 Filed 1-14-87; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, February 3, 1987
Wednesday, February 11, 1987
Wednesday, February 18, 1987
Wednesday, February 25, 1987

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632-9710.

**Thomas E. Anfinson,**

*Chairman, Federal Prevailing Rate Advisory Committee.*

January 9, 1987.

[FR Doc. 87-946 Filed 1-14-87; 8:45 am]

BILLING CODE 6325-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences; Review of Petitions in the 1986 Annual Review

On July 18, 1986 notice was published (51 FR 26088) listing petitions accepted for review in the 1986 annual review of the Generalized System of Preferences (GSP) Program. The purpose of this notice is to provide notification that our review of Case Numbers 86–20, 86–46 and 86–56 have been terminated, at the request of the respective petitioners.

**Donald M. Phillips,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 87–864 Filed 1–14–87; 8:45 am]

BILLING CODE 3190–01–M

---

### Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee Notice of Results of General Review

This publication provides notice regarding the disposition of competitive need waiver requests that were accepted for formal review as part of the General Review of the GSP program. A listing of requests accepted for review was published on August 7, 1985 (50 FR 31943). Those competitive need waivers granted by the President as part of the General Review were announced in a **Federal Register** notice of January 6, 1987 (52 FR 389). Those competitive need waiver requests not granted by the President as part of the General Review have been denied, except for a request by Spalding Sports Worldwide concerning TSUS 734.85 and Indonesia. A decision on this request has been postponed until the President announces his decisions concerning the 1986 Annual Review of the GSP program on or about April 1, 1987. The General Review of the GSP program was required by the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

**Donald M. Phillips,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 87–955 Filed 1–13–87; 8:45 am]

BILLING CODE 3190–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–7332]**

### Issuer Delisting; Application to Withdraw from Listing and Registration; Affiliated Publications, Inc. (Common Stock, $.01 Per Share)

January 9, 1987.

Affiliated Publications, Inc. ("Company") has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's common stock was recently listed on the NYSE.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 2, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–938 Filed 1–14–87; 8:45 am]

BILLING CODE 8010–01–M

**[File No. 1–9010]**

### Issuer Delisting; Application to Withdraw From Listing and Registration; Ausimont Compo N.V. (Common Shares, Par Value Dfl. 5 Per Share)

January 9, 1987.

Ausimont Compo N.V. ("Company"), a Netherlands corporation, has filed an applcation with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's Common Shares was recently listed on the New York Stock Exchange.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common shares from listing on the Amex, the Company considered the direct and indirect costs and expenses associated with the maintaining the dual listing of its common shares on the NYSE and the Amex. The Company does not see any advantage in the dual trading of its common shares and believes that dual listing would fragment the market for its common shares.

Any interested person may, on or before February 2, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–937 Filed 1–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC-15524; File No. 812-6517]

## Application for Exemption; The Variable Annuity Life Insurance Company, et al.

January 7, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("the Act").

*Applicant(s):* The Variable Annuity Life Insurance Company ("VALIC"), VALIC Separate Account One ("Account One"), VALIC Separate Account Two ("Account Two", or together with Account One, the "Disappearing Accounts"), VALIC Account A ("Account A") and American General Series Portfolio Company ("the Fund"), (collectively "Applicants").

Relevant 1940 Act Sections: Order requested *under* sections 6(c) and 17(b) exempting Applicants *from* sections 17(a) and 17(d) of the Act, *under* Rule 17d-1 thereunder permitting a joint arrangement, and *under* section 6(c) exempting Applicants *from* sections 26(a)(2)(c) and 27(c)(2) of the Act.

*Summary of Application:* Applicants seek an order to the extent necessary to permit the net assets of Accounts One and Two to be combined and transferred to a newly-created division of Account A ("Division Nine") and to permit the simultaneous exchange of the net assets held by Division Nine of Account A to a corresponding, newly-created portfolio of the Fund, titled the Quality Growth Fund ("QGF") portfolio, in exchange for QGF portfolio shares; and, to the extent necessary, to permit VALIC to deduct mortality and expense risk charges from Account A with respect to the forms of variable, and combination variable and fixed, annuity contracts issued by the Disappearing Accounts ("Existing Account One and Two Contracts"). Contractholders' interests in the Disappearing Accounts, registered management investment companies, will be exchanged for equivalent interest in Account A, a unit investment trust ("UIT").

*Filing Date:* The application was filed on October 29, 1986, and amended by filing of Amendment No. 1 on December 19, 1986.

*Hearing or Notification of Hearing:* If no hearing is ordered, the aplication will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. VALIC, Account One, Account Two, Account A, and the Fund, 2929 Allen Parkway, Houston, TX 77019.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Jeffrey M. Ulness, (202) 272-3027, or Special Counsel Lewis Reich, (202) 272-2061 (Office of Insurance Products and Legal Compliance).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

*Applicant's Representations and Statements of Facts*

(1) VALIC, a stock life insurance company organized on May 1, 1969, under the Texas Insurance Code, is licensed to write life insurance in the District of Columbia and in all 50 states, except Connecticut, and to sell annuities in all 50 states and the District of Columbia. VALIC is an indirect 100% owned subsidiary of American General Corporation. VALIC serves as the investment adviser for the Fund and the Disappearing Accounts. The Variable Annuity Marketing Company ("VAMCO"), a registered broker-dealer, serves as the principal underwriter for the Fund, Account A, and the Disappearing Accounts.

(2) The Disappearing Accounts and Account A were established by VALIC as separate investment accounts to which assets are allocated to support benefits payable under the variable portion of VALIC's group and individual variable, and combination variable and fixed, annuity contracts. Accounts One and Two are registered, open-end, diversified, management investment companies. Account A is a UIT, registered under the Act, currently consisting of eight divisions, five of which each invest solely in shares of a corresponding portfolio of the Fund.

(3) The Fund is a mangement investment company of the series type, organized under Maryland law on December 7, 1984. The Fund has five separate portfolios, each with a separate series of shares, corresponding to each of five of the eight existing divisions of Account A. The Fund's board of directors is authorized to create additional portfolios or delete portfolios.

(4) Existing Account One and Two Contracts are designed to provide retirement benefits under a variety of retirement programs. Although new Participants may be added to outstanding Existing Account One and Two Contracts and payments under such Contracts continue to be received, VALIC no longer actively markets these forms of contracts. None of the Existing Account One or Two Contracts imposes a sales load in excess of 8%.

(5) The Disappearing Accounts are currently assessed a daily charge, for investment management and advisory services, equal to a percentage of the current value of the account's net assets. Any applicable state premium taxes, based on the amount of purchase payments, may also be deducted from purchase payments. The Disappearing Accounts are also assessed a daily charge for VALIC's assumption of certain mortality and expense risks.

(6) The board of directors of VALIC and for Account A, the board of directors of the Fund, and the board of managers of the Disappearing Accounts, including a majority of their disinterested members, have adopted a plan of reorganization ("Plan"), pursuant to which Accounts One and Two will, subject to contractowner approval, be merged and converted into Division Nine of Account A, investing exclusively in QGF portfolio. The QGF portfolio will be offered to certain Account A contractowners in addition to the currently available portfolios of the Fund; however, the five currently offered portfolios will not be available to owners of Existing Account One and Two Contracts.

(7) The overall level of fees and charges borne, directly or indirectly, by owners of Existing Account One and Two Contracts will be no greater immediately after the reorganization than immediately before it. The investment advisory fee for the QGF portfolio will be higher than the current rates charged to the Disappearing Accounts. In addition, the Fund will incur certain other operating expenses not currently charged against the Disappearing Accounts. However, with respect to Existing Account One and Two Contracts, VALIC will make a daily adjustment in accumulation and annuity unit values to offset fully any excess over the maximum expense ratio, as defined herein, and the effect of all QGF portfolio expenses of these Contracts of a type or in an amount which would not have been borne by owners of Existing Account One and

Two Contracts had the reorganization not occurred.

(8) VALIC will not, however, assume extraordinary or non-recurring expenses of the Fund, such as legal claims and liabilities and litigation costs and indemnification payments in connection with litigation, or if the Fund fails to qualify as a "regulated investment company" under the applicable provision of the Internal Revenue Code. Applicants believe that such expenses and liabilities, although theoretically possible, are quite unlikely.

(9) Subject to shareholder approval, the advisory fee for the Fund's portfolio may be changed in the future. Nevertheless, after the transactions are consummated VALIC plans to issue endorsements to the owners of the Existing Account One and Two Contracts. The endorsements will provide that variable payments and values provided by the contracts will be based on the investment experience of Account A. Further, the endorsements will guarantee that the advisory fee charged to the QGF portfolio, plus the mortality and expense risk charges imposed against the assets of Division Nine of Account A with respect to the Existing Account One and Two Contracts, will never exceed current levels.

(10) VALIC will assume all costs to be incurred in effecting the reorganization and the reorganization will not have any adverse economic impact on the contractowners' interests under the Existing Account One and Two Contracts.

(11) Following the reorganization, VALIC will offer each owner of Existing Account One and Two Contracts the opportunity to instruct Account A's vote of Fund shares attributable to that owner's contract, on matters for which owners currently have a voting right. VALIC will vote shares of the QGF portfolio of the Fund held by Account A which are deemed attributable to contracts in accordance with instructions received from contractowners. Shares of the Fund held by Account A which are not deemed attributable to contractowners will be voted in proportion to the votes received from contractowners.

(12) The number of shares of the QGF portfolio to be issued to Division Nine of Account A will be determined by dividing the value of the net assets to be transferred by that Division by the initial net assets value per share assigned to the QGF portfolio.

(13) Each Applicant may be deemed an affiliated person of each other, or an affiliated person of an affiliated person, under section 2(a)(3) of the Act, and the transaction may be deemed to entail one or more purchases or sales of securities or other property between and among certain Applicants. Therefore, the reorganization may require an exemption from section 17(a) of the Act, pursuant to sections 6(c) and 17(b) of the Act. In this regard, Applicants argue that the terms of the proposed transactions are, for the reasons summarized below: reasonable and fair and do not involve overreaching; consistent with the investment policies of each of Accounts One, Two and A and the Fund; and are consistent with the general purposes of the Act, the public interest and the protection of investors.

(14) Preserving a larger asset base is expected to maximize investment flexibility and return, all for the benefit of current and future contractowners. Applicants expect that the reorganization will provide enconomies of scale and simplify business recordkeeping. The exchange of the portfolio assets of Division Nine of Account A for shares of the QGF portfolio of the Fund will be effected in conformity with section 22(c) of the Act and Rule 22c–1 thereunder.

(15) The reorganization is consistent with the investment objectives and policies of the Disappearing Accounts, the Fund and Account A. Though the investment objectives of Accounts One and Two are stated slightly differently, as a practical matter, they are the same in substance. Their management and investment strategy has been virtually identical since their inception nearly 18 years ago. The same individual serves as portfolio manager for both Disappearing Accounts; hence, the same personal judgment, priorities and emphasis are already in place with respect to each of them.

(16) Contractowners will be fully informed of the terms of the reorganization through proxy materials and will have an opportunity to approve or disapprove the Plan and the change in investment objective at a special meeting of contractowners called for that purpose. The current prospectuses for Accounts One and Two are being amended to indicate that the Disappearing Accounts intend to enter into the transactions described herein, subject to contractowner approval.

(17) VALIC believes, based on its review of existing federal income tax laws and regulations, that the transfer of assets and the combinations of the Disappearing Accounts will be tax-free events.

(18) The reorganization may also involve a transaction subject to section 17(d) and Rule 17d–1 thereunder and, accordingly, relief is requested from those provisions pursuant to section 6(c) of the Act and Rule 17d–1 thereunder. The Plan anticipates simultaneous purchase and sale transactions involving a number of registered companies, and each purchase and sale transaction is dependent on the others. Each purchase and sale transaction is, thus, an essential aspect of a more comprehensive plan and may be deemed to be in connection with a joint participation within the contemplation of section 17(d) and Rule 17d–1. Applicants assert that the terms of the reorganization are fair and reasonable and consistent with the provisions, policies and purposes of the Act.

(19) Applicants believe that the proposed transactions will result in overall benefits to VALIC, Accounts One, Two and A and the Fund, and that no benefits will inure to any one party to the detriment of any other.

(20) The QGF portfolio of Account A will be assessed daily charges equal to a percentage of its net assets for VALIC's assumption of certain mortality and expense risks. If the asset charge proves to be insufficient to cover the actual cost of the mortality and expense risk undertakings, VALIC will bear the loss. Conversely, if actual experience is favorable, VALIC will realize a profit that will be available for any proper corporate purpose.

(21) The mortality and expense risk charges for Account One (1.00%) and Account Two (.85% on the first $10,000,000 of net assets, .425% on the next $90,000,000, and .2125% on higher amounts) are within the range of industry practice for comparable variable annuity contracts issued by other insurance companies.

(22) VALIC expects the explicit sales charges under Existing Account One and Two Contracts to be sufficient to cover expected distribution costs. However, should the actual amounts derived from the sales charges prove insufficient to cover actual sales expenses, the deficiency will be met from VALIC's general corporate funds. In such circumstances, a portion of the mortality and expense risk charges could be viewed as providing for a portion of the costs relating to distribution of the Existing Account One and Two Contracts. In this connection, VALIC has concluded that the distribution financing arrangement benefits owners of Existing Account One and Two Contracts.

*Applicants' Conditions*: If requested order is granted, the Applicants agree to the following conditions:

(1) VALIC has undertaken to maintain at its home office, available to the

Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey of comparable variable annuity contracts issued by other insurance companies which supports its conclusion that the mortality and expense risk charges for Accounts One and Two are within the range of industry practice.

(2) VALIC undertakes to maintain and make available to the Commission upon request a memorandum setting forth the bases for its conclusion that the distribution financing arrangement described in its contracts benefits owners of Existing Account One and Two Contracts.

(3) VALIC will ensure that the assets of the Disappearing Accounts, and their successor, Division Nine of Account A, will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the Act, to have such plan formulated and approved by a board of directors, a majority of whom are not "interested persons" of the management company within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–936 Filed 1–14–87; 8:45 am]

BILLING CODE 8010–01–M

---

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 9, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

ADT Inc.
Common Stock, Par Value $1.00 (File No. 7–9503)
Anadark Petroleum Corp.
Common Stock, $0.10 Par Value (File No. 7–9504)
AVX Corp.
Common Stock, $1.00 Par Value (File No. 7–9505)
Barnes Group
Common Stock, $1.00 Par Value (File No. 7–9506)
Chemical Waste Management, Inc.
Common Stock, Par Value $0.01 (File No. 7–9507)
Computer Assoc. Int'l Inc.
Common Stock, $0.10 Par Value (File No. 7–9508)
Conseco, Inc.
Common Stock, No Par Value (File No. 7–9509)
Cont'l Information Systems, Inc.
Common Stock, $0.03 Par Value (File No. 7–9510)
Diversified Energies
Common Stock, $1.00 Par Value (File No. 7–9511)
Dorsey Corp.
Common Stock, $0.50 Par Value (File No. 7–9512)
Duke Realty Investments, Inc.
Common Stock, $0.01 Par Value (File No. 7–9513)
EDO Corp.
Common Stock, $1.00 Par Value (File No. 7–9514)
Entex, Inc.
Common Stock, $1.00 Par Value (File No. 7–9515)
Helene Curtis, Inc.
Common Stock, $1.00 Par Value (File No. 7–9516)
JWP, Inc.
Common Stock, $0.10 Par Value (File No. 7–9517)
Key Corp.
Common Stock, $5.00 Par Value (File No. 7–9518)
Morse Shoe
Common Stock, $1.00 Par Value (File No. 7–9519)
National Service Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–9520)
Paine Webber Group, Inc.
$2.25 Cumulative Convertible Exch. Pfd. (File No. 7–9521)
Reliance Group Holdings, Inc.
Common Stock, $0.10 Par Value (File No. 7–9522)
Safeguard Business Systems, Inc.
Common Stock, $0.10 Par Value (File No. 7–9523)
Tacoma Boatbuilding Co.
Common Stock, $1.00 Par Value (File No. 7–9524)
Toll Brothers, Inc.
Common Stock, $0.01 Par Value (File No. 7–9525)
Zweig Fund, Inc.
Common Stock, $0.10 Par Value (File No. 7–9526)
Anglo Energy Ltd.
Warrants (File No. 7–9527)
First Australian Prime Inc. Fund
Common Stock, $0.01 Par Value (File No. 7–9528)
Mayflower Group
Common Stock, $0.01 Par Value (File No. 7–9529)
Rooney Pace Group
Common Stock, $0.01 Par Value (File No. 7–9530)
Simco Stores, Inc.
Common Stock, $0.50 Par Value (File No. 7–9531)
United Video, Inc.
Common Stock, $0.01 Par Value (File No. 7–9532)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 2, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–939 Filed 1–14–87; 8:45 am]

BILLING CODE 8010–01–M

---

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 9, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Nucor Corporation
Common Stock, $0.40 Par Value (File No. 7–9496)
Utah Power & Light Company
Common Stock, $6.40 Par Value (File No. 7–9497)
British Gas Public Limited Company
American Depositary Shares (File No. 7–9498)
Taiwan Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9499)
Fort Howard Paper Company
Common Stock, $1.00 Par Value (File

No. 7–9501)
Melville Corporation
Common Stock, $1.00 Par Value (File No. 7–9502)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 2, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–940 Filed 1–14–87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Rel. No. 34–23968; File No. S7–33–86]**

## Joint Industry Plan; Filing of Proposed Reporting Plan for Over-The-Counter Securities Traded on an Exchange on an Unlisted Trading Privilege Basis.

On December 17, 1986, pursuant to Rules 11Aa3–2 and 11A3–1 under the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD") together with the Midwest Stock Exchange, Inc. ("MSE") filed with the Commission a proposed plan governing the collection, consolidation and dissemination of quotation and transaction information for certain National Market System ("NMS") securities listed on an exchange or traded on an exchange pursuant to a grant of unlisted trading privileges ("UTP").

### I. Background

Currently, exchanges trade only securities listed on the exchange or, pursuant to UTP, securities listed on another national securities exchange. On September 16, 1985, after lengthy proceedings,[1] the Commission issued a release announcing the terms and conditions under which the Commission would consider granting exchanges UTP in NMS Securities.[2] Generally, the Commission determined to establish a one year pilot in which each exchange could receive UTP in up to 25 NMS Securities. The Commission conditioned the grant of UTP, however, on agreement by the exchanges and the NASD on a plan for providing joint dissemination of quotation and transaction information ("consolidated plan").[3] The Commission also determined that, while it was premature to require any specific type of market linkages prior to the initiation of trading, the exchanges must provide OTC market makers direct access to the exchange specialists in UTP securities to facilitate intermarket trading in these securities. Finally, the Commission stated that it would evaluate trading under the one year pilot and at the end of the pilot would determine what further action to take in this area.

#### *A. Status of Current Negotiations*

Since October 1985, the NASD, Amex, Boston ("BSE"), Cincinnati ("CSE"), Pacific ("PSE") and Philadelphia ("Phlx") Securities Exchanges, and the Chicago Board Options Exchange ("CBOE")[4] have been negotiating the terms of a joint self-regulatory organization ("SRO") plan for consolidated quotation and transaction reporting. Substantial progress has been made on the contents and language of the plan. Specifically, the participant SROs have reached agreement on: the governance of the UTP/OTC facility; deferral, generally, of revenue issues until one year after commencement of the plan; and, in concept,[5] the development of either a new processing facility, separate from but operated by, NASDAQ, or modifications to NASDAQ, that would provide for the collection, consolidation and dissemination of quotations and transactions, with market identifiers, in OTC/UTP securities.

The Commission recognizes the good faith efforts of the exchanges and the NASD in negotiating this plan. The Commission is also cognizant, however, of the long delay in reaching final agreement on the plan. The Commission, therefore, expects the exchanges and the NASD to commit every needed resource to complete the plan by the end of February 1987. Even assuming, however, agreement in the near future on this plan, the commencement of UTP trading under this plan appears to be at least six months away.[6]

The MSE has determined that it no longer wishes to delay commencing trading OTC/UTP securities until there is agreement upon and implementation of the plan that has been the focus of the negotiations to date. Instead, the MSE wishes to commence trading as soon as possible under a plan, described below.[7] The proposed plan essentially provides for the MSE[8] to use currently available NASDAQ equipment, rather than a separate processor, to submit to NASDAQ quotation and transaction information in the securities MSE seeks to trade on a UTP basis.

---

[1] On November 16, 1984, the Commission issued a release soliciting comment on both the general issue of whether UTP in over-the-counter ("OTC") stocks should be granted, and on specific questions to be addressed before the grant of such privileges. Securities Exchange Act Release No. 21498 (November 16, 1984), 49 FR 46156. *See* also Securities Exchange Act Release Nos. 22583 (December 18, 1984), 50 FR 730; and 22127 (June 21, 1985) 50 FR 26584.

[2] Securities Exchange Act Release No. 22412 (September 16, 1985) 50 FR 38640 ("OTC/UTP Release"). Of course, the grant of UTP in specific securities would be pursuant to Section 12(f) of the Act and only after the notice and comment period specified in that Section. *See infra*, note *19*.

[3] This requirement parallels the systems for disseminating information on listed securities, where all exchanges and the NASD are participants in the Consolidated Tape Association ("CTA") and Consolidated Quotation System ("CQS"). The systems are operated by the Securities Industry Automation Corporation ("SIAC"), a corporation jointly owned by the American ("Amex") and New York ("NYSE") Stock Exchanges. The UTP Release indicated that NASDAQ would be the appropriate system through which trade reporting should occur for securities subject to OTC/UTP and that NASDAQ, Inc., the NASD subsidiary that currently operates last sale reporting and quotation systems for the HASD's market, appeared to be qualified to serve as processor for exchange and OTC quotations and last sale reports for such securities.

[4] The NYSE chose not to participate in these discussions because it is not at this time interested in applying for UTP in OTC stocks. While the BSE also is not interested in trading OTC securities pursuant to UTP, it does have several NMS Securities listed on the exchange, thus requiring it to enter into a joint plan. *See* Securities Exchange Act Release No. 22413 (September 16, 1985), 50 FR 38515.

[5] The participants have not agreed upon the cost and timing of implementation of either a new facility or modification to NASDAQ.

[6] The NASD has indicated that the time required to complete the processor could easily exceed six months. In view of the long delays already experienced, and because the Commission considers commencement of OCT/UTP trading and priority NASDAQ issue, the Commission urges the NASD to complete development of the processor at the earliest practicable date.

[7] The MSE also has submitted an application for UTP in 25 OTC stocks. Notice of MSE's application pursuant to Section 12(f)(1)(C) of the Act is being published concurrently with publication of this release in Securities Exchange Act Release No. 23967.

[8] Any other exchange would be free to become a participant in this plan.

**II Description of Plan**

The porposed plan [9] provides for the collection, consolidation and dissemination of quotation and transaction information in "eligible securities," *i.e.*, NMS securities traded on an exchange on a listed or a UTP basis. Although the signatories to the proposed plan are the Midwest and NASD, the plan states that "[a]ny other national securities association or national securities exchange . . . . may become a [p]articipant" upon execution of the plan. The plan would become efective after Commission approval on that date on which the participants are prepared to, and do, commence publication of quotation and transaction information in eligible securities as contemplated by the plan.

The plan makes specific provision for (1) administration of the plan by the participants through an operating committee; [10] (2) selection, and evaluation of the performance of the processor, which for an initial five year term would be NASDAQ [11] and (3) the functions of the processor.

The processor would use the existing NASDAQ System and the NASD's transaction reporting system to collect, consolidate and disseminate quotation and transaction information in eligible securities from NASDAQ market makers and exchange participants. Participants would enter quotation information into the NASDAQ system through either NASDAQ terminals provided by the processor, or by "terminal emulation," *i.e.*, by conforming the participant's own equipment to NASDAQ specifications. It is expected that the former method will be used. Transaction reports would be entered into the NASDAQ system through either NASDAQ terminals, terminal emulation, or through a computer-to-computer interface ("CTCI") that conforms to NASDAQ specifications.

The processor would disseminate consolidated quotation and transaction information to vendors, subscribers and others "in "a fair and non-discriminatory manner." [12] The processor would disseminate on NASDAQ Level 1 service [13] a consolidated best bid and asked quotation with size based upon quotation information for eligible securities received from all exchange participants and NASDAQ market makers. Under the proposed plan the consolidated best bid and asked quotation on Level 1 will not contain a market identifier. [14]

The processor also would disseminate a data stream of all quotation and transaction reports regarding eligible securities received from the participants. Each quote would be designated with a symbol identifying the exchange participant or NASDAQ market maker from whom the quotation emanates. Initially, transaction reports will not include a participant identifier.

The plan also provide for the manner in which each participant shall submit quotations and transaction reports to the processor, and specifically requires that transaction reports be submitted within 90 seconds after execution of the transaction. [15]

The plan provides that the processor shall cease disseminating quotations to vendors if the "primary market" [16] for a security calls a "regulatory" trading halt or quotation suspension, [17] and provides that participant markets that continue trading during such a halt shall continue to transmit transsaction reports to the processor. [18] The processor is required to disseminate to vendors any such transaction reports. The plan provides that when the primary market determines that adequate publication of information has occured to allow the termination of a regulatory halt, the

---

[9] The following is a summary of the major provisions of the plan. Copies of the full plan are available at the Commission, the NASD, and the MSE.

[10] Unanimous votes would be required for certain matters including amendments to the plan; reduction of fees charged by the plan; and termination of the processor for other than "reasonable cause."

[11] Among other things, the plan provides that participants will not request system changes by the processor for 12 months after the plan becomes effective.

[12] The plan specifically permits the NASD to continue in effect its existing quotation exchange agreement with the London Stock Exchange. (*see* Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15989) and states that the NASD or any of its subsidiaries could disseminate outside of the United States quotation and transaction information regarding any OTC/UTP security in any manner "it deems proper." The MSE has expressed its concern over the possibility that NASDAQ might use this discretion to deny consolidated UTP data (*i.e.*, combined NASDAQ and exchange data) even to those foreign entities that affirmatively request such information. *See* letter from Charles V. Doherty, President, MSE, to Jonathan G. Katz, Secretary, SEC, dated November 19, 1986.

The Commission notes that the effect of Rule 11A–2 under the Act is to require that quotation and transaction information be made available on a non-discriminatory basis to domestic vendors of securities information. Moreover, because the requirement for the display of information flows from the goals of a national market system as specified in Section 11A of the Act (*e.g.*, fair competition among markets and the ability of investors to achieve best execution) it appears that those goals would be furthered by the availability of such information abroad to persons who request the information. The Commission notes that the NASD's representatives have indicated a willingness to include a provision in the permanent UTP Plan that would require the NASD as processor to disseminate consolidated information to foreign vendors who request that information. The Commission endoreses that position expects that the NASD would reach the same position and regarding any request for information pursuant to the interim plan.

[13] NASDAQ Level 1 service provides the best bid and offer quotations in each NASDAQ security without identifying market makers.

[14] By letter agreement, the NASD and MSE have indicated that should the permanent joint SRO plan (which is expected to include a specific timetable for implementation of market identifiers) not be executed by November 20, 1987, or should negotiations regarding a permanent plan be abandoned, the NASD and MSE will use their best efforts to implement market identifiers with regard to best bid and ask quotations as well as volume dissemination and computer-to-computer quotation entry capacity within six months from the earlier of such events to occur. *See* Letter from Charles V. Doherty, President, MSE, to Frank Wilson, NASD, dated November 20, 1986. Implementation by the MSE and NASD of any of these features will require amendment of the Plan.

[15] The plan does not include provisions addressing the issue of locked and crossed quotations in eligible securities or trade throughs. Instead, the NASD has indicated that it will enforce its members' best execution obligations and will take into account the MSE's or other exchanges' quotations in UTP securities in doing so. *See* Letter from Frank Wilson, NASD, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 3, 1986. The MSE in turn has indicated that it will discipline any MSE member who intentionally locks a NASDAQ quote for the purpose of disturbing the operation of OTC automated execution systems. *See* Letter from George T. Simon, Counsel to MSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 11, 1986.

The plan does not include provisions addressing the issue of locked and crossed quotations in eligible securities or trade throughs. Instead, the NASD has indicated that it will take into account the MSE's or other exchanges' quotations in UTP securities in doing so. *See* Letter from Frank Wilson, NASD, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 3, 1986. The MSE in turn has indicated that it will discipline any MSE member who intentionally locks a NASDAQ quote for the purpose of distrubing the operation of OTC automated execution systems. *See* Letter from George T. Simon, Counsel to MSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 11, 1986.

[16] The term "primary market" is defined to mean NASDAQ unless another market obtains 50% of share and transaction volume in a security over a 12-month period.

[17] The proposed plan requires that whenever a regulatory halt or quotation suspension is called by the primary market because it has determined "that there are matters relating to the security or the issuer thereof that have not been adequately disseminated to the public, or that there are regulatory problems relating to the security that should be clarified before trading therein is permitted to continued," the primary market must notify the processor and each participant trading the security and provide the reasons for the halt or suspension. The NASD currently does not have rules enabling it to halt trading by its members, but does have procedures for suspedning quotations. *See infra*, note 18.

[18] In this regard, the Commission notes that, although the Plan and current NASD and exchange rules do not require NASD and exchange members to stop trading during a quotation suspension, Rule 11Ac1–1 under the Act ("Quote Rule") requires an exchange or the NASD to make available to vendors quoations of any of their members who continue to trade "subject securities" during a quotation suspension. *See* Rule 11Ac1–1(b) (i) and (ii). Accordingly, the MSE and the NASD may wish to discuss with the Commmission's staff obtaining interpretive or other relief regarding the application of these provisions of the Quote Rule to the Plan's proposed quotation suspension provisions.

primary market shall notify the processor and each participant trading the security. Adequate publication is deemed to occur one hour after publication of the information in a national news dissemination service.

The Plan provides that each exchange participant shall permit NASDAQ market makers direct telephone access to the specialist post in each eligible security in which the market maker is registered, and requires the NASD to ensure exchange participants equivalent telephone access to NASDAQ market makers.

Finally, the plan generally provides that questions concerning cost allocation and revenue sharing among participants shall be deferred until one year after the date of execution of the plan.

### III. Request for Comment

Interested persons are invited to submit written comments concerning the proposed plan.[19] Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. All communications should refer to File No. S7–33–86 and should be submitted by February 17, 1987.

Dated: January 7, 1987.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–941 Filed 1–14–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Regulations 14D and 14E, Schedules 14D–1 and 14D–9 No. 270–114]**

## Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth Fogash (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an estension of clearance Schedule 14D–1 and Schedule 14D–9 under the Securities Exchange Act of 1934. These Schedules provide a basis for the Commission to fulfill its statutory responsibility to ensure that holders of publicly-traded securities receive adequate information concerning tender offers for their securities. A copy of this submission is available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Submit comments to OMB Desk Officer: Robert Neal (202) 395–7340, Office of Information and Regulatory Affairs, Commerce and Lands Branch, Washington, DC 20503.

**Shirley E. Hollis,**

*Assistant Secretary.*

January 5, 1987.

[FR Doc. 87–942 Filed 1–14–87; 8:45 am]

BILLING CODE 8010–01–M

---

**(Rel. No. 34–23970; File No. SR–PSE–84–23)**

## Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Listing of Securities With Unequal Voting Rights

Pursuant to secton 19(b)(1) of the Securities Exchange Act of 1934, 15, U.S.C. 78s(b)(1), notice is hereby given that on November 15, 1984, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the PSE.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested people.[1]

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule I, section 3(b), of the Rules of its Board of Governors relating to the listing of securites with unequal voting rights. The proposal will eliminate the Exchange's requirement that in order for the securites of any class to be considered for listing, the common stock of the issuer must have equal voting rights.

### II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed rule Change

In its filing with the Commission the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change*

The Exchange's requirements for the listing and delisting of securities are set forth in Rule I, section 3, of the Rules of the Board of Governors of the PSE. Section 3(b) of Rule I currently provides in part: "In order for the securities of any class to be considered for listing, the issuer shall have equal voting rights per share for shareholders in each class of Common Stock . . ." The Exchange has interpreted this to require that all classes of an issuer's common stock have equal voting rights. On several occasions in the past, the PSE's Joint Equity Listing Committee ("Committee") has waived this provision, especially in connection with the admission of securities to unlisted trading privilege. Two such issues which were admitted to unlisted trading privileges underlie option contracts traded at the Exchange.

The PSE's Listings Department has received an increasing number of inquiries from companies which have two or more classes of common stock with different voting rights. The Committee and the PSE's Board of Governors determined that the requirement that all classes of an issuer's common stock have equal voting rights should be deleted from Rule I, section 3(b), to give the Committee greater flexibility in reviewing prospective new listings.

---

[19] As indicate above, at note 7, notice of MSE's application for UTP on certain securities has been published separately, and persons desiring to comment on that application should refer to that release. The Commission also notes that commencement of trading under the proposed MSE/NASD plan will not trigger the one-year evaluation period announced in the OTC/UTP release. *See* OTC/UTP Release, *supra* note 2. The intent of this pilot period was to allow Commission evalution under the full terms and conditions (including market identifiers) announced in the OTC/UTP Release before the Commission considered expanding the grant of UTP to a greater number of securities.

[1] In 1984, when the PSE filed the proposed rule change, the Commission's Division of Market Regulation was awaiting the completion of a New York Stock Exchange ("NYSE") study on dual classes of stock. Therefore, the PSE and the Commission decided to take no action with respect to the PSE's filing until the Division had the opportunity to review the study. Since then both the American Stock Exchange (SR–Amex–86–32) and the NYSE (SR–NYSE–86–17) have submitted proposed rule changes relating to dual classes of stock, and the Commission held public hearings in December 1986 on the NYSE's proposal. Since the three proposals relate to the same issue, the Commission intends to consider the Amex's, NYSE's and PSE's proposals all at the same time.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("Act"), in that it is intended to facilitate transactions in securities and to protect investors and the public interest, and is not designed to permit unfair discrimination between issuers of securities which may be traded on the Exchange.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change imposes no burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor recieved.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of the notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

*(A) By order approve such proposed rule change, or*

*(B) Institute proceedings to determine whether the proposed rule change should be disapproved.*

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 29, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 8, 1987.

**Jonathan G. Katz.**

*Secretary.*

[FR Doc. 87-943 Filed 1-14-87; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Certain Over-the-Counter Securities

January 7, 1987.

The Midwest Stock Exchange, Inc. ("MSE") on December 18, 1986, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

| Symbol | Issuer | File No. |
|---|---|---|
| AGREA | American Greeting Corp., Class A. | 7-9472 |
| AAPL | Apple Computer, Inc. | 7-9473 |
| TATE | Ashton Tate | 7-9474 |
| BMGC | Battle Mountain Gold Company | 7-9475 |
| CMCO | Comb Co. | 7-9476 |
| CTUS | Cetus Corp. | 7-9477 |
| CVGT | Convergent Technologies Inc. | 7-9478 |
| DIGI | DSC Communications Corp. | 7-9479 |
| DAZY | Daisy System Corp. | 7-9480 |
| GENE | Genetech Inc. | 7-9481 |
| HENG | Henley Group, Inc. | 7-9482 |
| INTC | Intel Corporation | 7-9483 |
| INGR | Intergraph Corporation | 7-9484 |
| KEMC | Kemper Corporation | 7-9485 |
| LIZC | LIZ Claiborne Inc. | 7-9486 |
| LOTS | Lotus Development Corp. | 7-9487 |
| LMED | Lyphomed Inc. | 7-9488 |
| MCIC | MCI Communications Corp. | 7-9489 |
| MAXI | Maxicare Health Plans Inc. | 7-9490 |
| PCLB | Price Co. | 7-9491 |
| SGAT | Seagate Technologies | 7-9492 |
| SMED | Shared Medical Systems Corp. | 7-9493 |
| SHON | Shoneys Inc. | 7-9494 |
| TNDM | Tandem Computers Inc. | 7-9495 |
| TCOMA | Telecommunications Inc. Cl. A. | 7-9496 |

**Comments**

Interested persons are invited to submit on or before January 28, 1987, written comments, data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Commenters are requested to address whether they believe the grant of UTP is consistent with section 12(f)(1)(C). In considering an application for extension of UTP to OTC securities under section 12(f)(1)(C), the Commission is required to take account of, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists. In this connection, commentators should note that the Commission previously has stated, as a general matter, that the grant to an exchange of UTP for up to 25 OTC stocks pursuant to section 12(f)(1)(C) would be appropriate, subject to the establishment of a facility for consolidating the OTC and exchange reports of quotations and transactions in such securities.[1] The NASD and MSE have submitted a plan intended to provide for such a reported facility.[2] Accordingly, commentators may wish to address the specific question of UTP regarding these securities in the context of the Commission's general policy statements in this area. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-944 Filed 1-14-87; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2258; Amdt. No. 4]**

### Missouri; Declaration of Disaster Area

The above-numbered Declaration (51 FR 37532), as amended (51 FR 40099), (51 FR 41887), and (51 FR 45573), is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated November 12, 1986, to include St. Louis County in the State of

[1] *See* Securities Exchange Act Release No. 22412 (September 16, 1986) 50 FR 38640.

[2] *See* Securities Exchange Act Release No. 23968 (January 7, 1987). Commentators wishing to discuss the proposed MSE/NASD consolidated reporting plan should refer to the release noticing that plan.

Missouri as an adjacent county because of damage from severe storms and flooding beginning on September 18, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 15, 1986, and for economic injury until the close of business on July 14, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: November 17, 1986.

**Bernard Kulik,**

*Deputy Associate Administrator for Disaster Assistance.*

[FR Doc. 87-868 Filed 1-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

**[License No. 06/06-0284]**

### Pasadena Capital Corp.; Surrender of License

Notice is hereby given that Pasadena Capital Corporation (PCC), 202 S. Tatar, Pasadena, Texas 77506 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). PCC was licensed by the Small Business Administration on July 5, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 31, 1986, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: January 8, 1987.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 87-869 Filed 1-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

**[Licaense No. 06/06-0279]**

### Texas State Capital Corp.; Surrender of License

Notice is hereby given that Texas State Corporation (TSCC), 900 Austin Avenue, Georgetown, Texas 78626 has surrendered its License to operate as a amall business investment company under the Small Business Investment Act of 1958, as amended (Act). TSCC was licensed by the Small Business Administration on April 23, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 29, 1986, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: January 8, 1987.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 87-870 Filed 1-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

**[License No. 06/06-0293]**

### Neptune Capital Corp.; Issuance of a Small Business Investment Company License

On July 24, 1986, a notice was published in the **Federal Register** (Vol. 51 No. 142) stating that an application has been filed by Neptune Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business on August 23, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06-0293 on December 23, 1986, to Neptune Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 8, 1987.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 87-871 Filed 1-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

## UNITED STATES INFORMATION AGENCY

### Reporting and Recordkeeping Requirement Under OMB Review

**AGENCY:** United States Information Agency.

**ACTION:** Notice of Reporting Requirement Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of its information collection on a standardized program report.

**DATE:** Comments must be received by January 30, 1987. If you intend to comment and cannot do so by the deadline, please contact the Agency Clearance Officer or OMB Reviewer.

*COPIES:* Copies of the request for clearance (S.F. 83), instructions, supporting statement, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Desk Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB. Attention: Desk Officer for USIA.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer: Margaret G. Page, United States Information Agency, M/ASP, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 485-1408, and OMB Reviewer: Francine Picoult, Information and Regulatory Affairs, Office of Management and Budget New Executive Office Building, Washington, DC 20503. Telephone (202) 395-7340.

**SUPPLEMENTARY INFORMATION:** Title "A Grants Program for Private Organizations." Public non-profit organizations interested in conducting educational and cultural exchange programs with the people of foreign countries may apply for grant assistance to USIA. An application for a grant must be in the form of a concept paper of five tyepwritten pages. Applications are reviewed by staff members of USIA's Office of Private Sector Programs, and then turned over to a panel to be screened for final approval. Grants are not awarded to projects that are essentially research, involve funding of publications, or finance the policy views of foreign governments.

It is the intention of the Federal Government to enhance the educational and cultural exchange programs of private non-profit organizations rather than complete with them. This program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256.

Dated: January 9, 1987.

**Charles N. Canestro,**

*Management Analyst, Federal Register Liaison.*

[FR Doc. 87-889 Filed 1-14-87; 8:45 am]

BILLING CODE 8230-01-M

## National Endowment for Democracy: Relocation

The address for the National Endowment for Democracy is due to change on February 1, 1987. The new address upon relocation will be as follows: 1101 15th Street NW., Suite 203, Washington, DC 20005. Telephone: (202) 293-9072.

Dated: January 8, 1987.

**Charles N. Canestro,**

*Federal Register Liaison.*

[FR Doc. 87-918 Filed 1-14-87; 8:45am]

BILLING CODE 8230-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 10
Thursday, January 15, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

January 12, 1987.

**TIME AND DATE:** 10:00 a.m., Thursday, January 22, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. The NACCO Mining Company, Docket No. LAKE 85-87-R, etc. (Issues include consideration of requirements for taking enforcement action under section 104(d) of the Mine Act. 30 U.S.C. 814(d).)

* * * * *

**TIME AND DATE:** 10:00 a.m., Thursday, January 29, 1987.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Youghiogheny & Ohio Coal Co., Docket No. LAKE 84-98. (Issues include whether the judge properly found the operator in default and the violations at issue to be significant and substantial contributions to a mine safety hazard.)

It was determined by a unanimous vote of Commissioners that the meeting on January 22, 1987 be closed.

Any person intending to attend the meeting on January 29, 1987 who needs special accessibility features must inform the Commission in advance of those needs. 20 CFR 2706.150(a) (3) and 2706.160(e).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653-5629.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 87-1015 Filed 1-13-87; 3:26 pm]

**BILLING CODE 6735-01-M**

**NATIONAL LABOR RELATIONS BOARD**

**TIME AND DATE:** 9:00 a.m., Thursday, January 22, 1987.

**PLACE:** Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

**STATUS:** The first part of this meeting will be closed to the public. The remaining part of the meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Portion closed to the public

Board case agenda

Portion open to the public

Procedures for selection of Regional Directors and Officers-in-Charge, following Board case agenda

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, 12 January 1987.

By direction of the Board.

**John C. Truesdale,**

*Executive Secretary.*

[FR Doc. 87-976 Filed 1-13-87; 11:33 am]

**BILLING CODE 7545-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** (52 FR 1413, January 13, 1987).

**STATUS:** Closed/open meetings.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Wednesday, January 7, 1987.

**CHANGE IN THE MEETINGS:** Additional items.

The following item will be considered at a closed meeting on Tuesday, January 13, 1987, at 1:30 p.m.

Consideration of *amicus* participation.

The following item will be considered at an open meeting on Wednesday, January 14, 1987, at 9:30 a.m., in Room 1C30.

Consideration of whether to give delegated authority to the Director of the Division of Investment Management to grant temporary relief, under section 9(c) of the Investment Company Act of 1940 ("Act"), from the automatic bar of section 9(a) of the Act, for periods up to 60 days, and whether to issue a release announcing the delegation. For further information, please contact George Martinez at (202) 272-3024.

Commissioner Cox, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ida Wurczinger at (202) 272-2014.

**Jonathan G. Katz,**

*Secretary.*

January 12, 1987.

[FR Doc. 87-1013 Filed 1-13-87; 3:04 pm]

**BILLING CODE 8010-01-M**

# Corrections

Federal Register
Vol. 52, No. 10
Thursday, January 15, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-943-07-4220-10; 032; OR-37548]

### Oregon; Proposed Withdrawal and Opportunity for Public Meeting

*Correction*

In a correction to notice document 86–27106 appearing on page 46746 in the issue of Wednesday, December 24, 1986, make the following correction in the land description for "T. 20 S., R. 5 W.,":

Change number 1 should read:

1. On page 43675, in "Sec. 9", the fifth and sixth lines should read: "E½SE¼ NW¼SW¼SW¼, E½SW¼SW¼SW¼, NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼NE¼SE¼,".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

[T. D. 8114]

### Income Taxes; Withholding Upon Dispositions of U. S. Real Property Interests by Publicly Traded Partnerships, Publicly Traded Trusts and Real Estate Investment Trusts

*Correction*

In rule document 86–28509 beginning on page 46651 in the issue of Wednesday, December 24, 1986, make the following corrections:

1. On page 46652, in the second column, in the second complete paragraph, in the fourth line, "entitles" should read "entities", and the last line of the same paragraph should read "5(c)(3) apply.";

2. On the same page, in the same column, ten lines from the bottom, "capital" should read "withholding";

§ 1.1445–8T [Corrected]

3. On page 46653, in the second column, in the eighth line, the paragraph designator "(3)" should read "(b)", and in the same paragraph (§ 1.1445–8T(b)(1), the ninth line should read "general rules of § 1.1445–5(a) and (b) and"; and

4. On page 46654, in § 1.1445.8T(g), insert "a" at the end of the third line.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 161

[CGD 85-076]

### Berwick Bay Vessel Traffic Service

*Correction*

In proposed rule document 87–373 beginning on page 806 in the issue of Friday, January 9, 1987, under **DATES**, the deadline for comments should read "March 10, 1987".

BILLING CODE 1505-01-D

federal register

Thursday
January 15, 1987

Part II

# Department of Agriculture

Farmers Home Administration

7 CFR Parts 1809 et al.
General Revision of Farmer Program Regulations; Proposed Rule

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Parts 1809, 1900, 1902, 1910, 1924, 1941, 1943, 1945, 1951, 1955, 1962, 1965, and 1980

### General Revision of Farmer Program Regulations

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) proposes to amend its regulations to: (1) Provide for the use of ratios and standards and a preapplication for determining the degree of potential loan risk on insured loans; (2) remove appraisal regulations from the Code of Federal Regulations; (3) require each State to publish unit prices for farm commodities each year; (4) authorize the State Director to overturn a favorable County Committee decision; (5) prohibit loans for advance payment of cash leases; (6) require crop insurance; (7) restrict use of balloon payments; (8) restrict new loans to previously FmHA foreclosed borrowers and previous borrowers whose FmHA debts have been debt settled unless certain conditions are met; (9) provide for FO loans on leasehold interests in Hawaii; (10) remove obsolete and unfunded loan program regulations; (11) add more guidance on what is a nonfarm enterprise; (12) clarify the EM disaster designation procedure; (13) require financial information from all members of an entity and delete the reference to principal members; (14) clarify calculations for an EM actual loss, and prevent duplication of benefits from other agencies; (15) protect historic sites and correct health or safety problems; (16) add provisions for farm debt restructure and conservation set-aside conservation easements; (17) redefine a borrower; (18) clarify the use of the word character; (19) remove obsolete material and make other necessary clarifications and editorial changes; (20) further clarify the use of proceeds from the sale of chattel security and the release of chattel security. The need for the action is to allow the Administrator more flexibility in management of Farmer Program loans, strengthen and clarify noted weaknesses in existing regulations, and remove obsolete and unfunded regulations. The proposed changes will: (1) Allow early screening of applications which should speed up processing for worthy applicants. It should also reduce losses to the government by reducing the vulnerability of making weak loans. (2) Correct noted weaknesses in existing Farmer Program regulations.

**DATE:** Comments must be submitted on or before February 17, 1987.

**ADDRESSES:** Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** William Krause, Director, Emergency Loan Division, Farmers Home Administration, USDA, Room 5420, Washington, DC 20250, Telephone: (202) 382–1632.

**SUPPLEMENTARY INFORMATION:**

#### Classification

This section has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse action on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

#### Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

#### Discussion of the Major Items of the Proposed Rule

1. The agency is proposing to remove Subpart A of Part 1809, "Appraisal of Farms and Leasehold Interests," from the Code of Federal Regulations as it is an administrative regulation used to instruct the FmHA field staff in completing appraisals of farm real estate and leasehold interests. Copies of the regulation will be available for review in any FmHA office. The techniques or methods used in FmHA farm appraisals are within the guidelines, standards and principles used or recommended by various associations of professional farm-ranch managers and appraisers. FmHA's determination of the recommended market value of farm real estate is based on the three recognized standards for appraising which are the Market Data Approach, Capitalization Approach and the Summation Approach. The agency is proposing to remove Subpart C of Part 1943, "Insured Recreation Loan Policies, Procedures and Authorizations," and § 1980.190, "Recreation loans," of Subpart B of Part 1980 from its regulations. This is a minor program. Since 1969 only 460 insured loans and three guaranteed loans for a total of $20,527.880 were made. As of October 21, 1985, only 210 loans for a total of $13,325,000 remain outstanding. The program has not been funded since Fiscal Year 1981. Indications are that it will not receive funding in the foreseeable future. The agency is also proposing to remove § 1980.170,

"Emergency loans," of Subpart B of Part 1980 from its regulations. The program for guaranteed emergency loans has been under suspension for a number of years. Lenders have shown very little interest in the program due to the complicated process of calculating losses and the additional paperwork involved in applying for the subsidized interest rate. It has been a difficult program for the agency to administer and monitor. The withdrawal of the above mentioned regulations will reduce the agency's cost of updating and publishing regulations for programs no longer in use. Due to present and proposed budget cuts, the agency must reduce costs wherever it can. A number of regulations will be revised to delete the references to these regulations.

2. The agency proposes to revise certain Exhibits and paragraphs of Subpart B of Part 1900 to clarify the language which is causing confusion in regards to appeal hearings and hearing officers.

3. The agency proposes to revise Subpart A of Part 1902 of the regulations to delete the requirement that the original cancelled check must be returned by the bank when counter-signed checks are used to keep the regulation in line with evolving technology in the commercial banking industry.

4. The agency proposes to amend Subpart A of Part 1910 for farmer program loans. The following is a discussion of the major items. When there is a shortage of funds, preference will be given to presently indebted FmHA insured and guaranteed loan borrowers. This is necessary to protect the government's interest. These borrowers have little if any other credit available for their farming operation. It seems only fair to take care of presently indebted borrowers in whom the government already has an investment before taking on new customers when there is not enough money to go around.

When funds are exhausted for a particular program FmHA will stop taking applications for that program. Not accepting applications when funding is exhausted for FO, SW, and/or OL loan request will reduce the anxiety potential applicants have regarding their expectations for receiving assistance and will allow them to seek other alternatives without further delay. It will also reduce the demand on the FmHA field staff in processing applications which will not be funded and allow additional time for FmHA's field staff to provide additional supervision and servicing section for present indebted borrowers.

FmHA will now use a pre-application. This will save applicants and FmHA time and money. Applicants with a high degree of potential loan failure or risk and those who are of low risk and financially sound will be identified early in the process without having to provide all the information necessary for a complete application. This should speed up loan processing for the applicant and assist FmHA to meet the requirement for prompt loan approval.

FmHA officials have looked at numerous reviews of FmHA loan data and published studies and reports completed by various Agricultural Land Grant Institutions, United States Department of Agriculture (USDA), Economic Research Service (ERS), Federal Reserve Board officials, Farm Credit Administration (FCA) officials, and individuals associated with the agricultural banking industry, concerning the type of ratios to use in a pre-application and the standards or thresholds for each. The following narrative will briefly describe the reasons FmHA intends to use the selected ratios.

*A. When Ratios Are To Be Used*

The *pre-application* review, as proposed, will be made by the FmHA County Supervisor and will include three ratios. The ratios to be used include the total liabilities/total assets, net cash farm income (before interest payments) minus family living expenses/total assets and current assets/current liabilities. The *completed* application will include the total liabilities/total assets, net cash farm income (before interest payments) minus family living expenses/total assets and balance available/total debt payments.

It is intended that the data for the *pre-application* ratios be obtained from the application or Form FmHA 410–1, while the data for the *completed application* ratios be obtained from the planned budget for the planned crop year. The County Supervisor (or other loan approval official) will be expected to reject those pre-applications and completed applications if the ratios show no reasonable prospect for success and a high degree of potential loan failure or risk. The County Supervisor will require all pre-applicants that have ratios showing a low degree of potential loan failure or risk to provide written evidence that they have attempted to obtain conventional credit either with or without a FmHA guarantee. FmHA believes such applicants are financially sound and should qualify for conventional credit.

*B. Ratios and Standards To Be Used*

1. *Total liabilities/total assets—[This ratio is to be used in the pre-application and completed application loan package].* [For entity pre-applications, this ratio will be calculated by taking the total assets and liabilities of the entity and adding in the total assets and liabilities from the personal balance sheets of the entity members. This ratio must be calculated this way for entities due to FmHA's policy of requiring entity members to pledge individual assets as security]. A number of recent studies disclosed that the total liabilities/total assets ratio is a significant indicator in predicting the risk of an agricultural loan. These studies include "Financial Characteristics of U.S. Farms," January 1, 1986, or "USDA ERS Information Agriculture Bulletin, Number 500," dated August 1986; General Accounting Office (GAO) study entitled "FmHA Financial and General Characteristics of Farmer Loan Program Borrowers," dated January 1986; and a study published in the Journal of Commercial Bank Lending, by David M. Kohl and Stanley O. Forbes, entitled "Lending to Agribusiness: A Systematic Loan Analysis for Agricultural Lenders," dated February 1982. These and other studies, and commonly accepted agribusiness lending practices adopted by the Farm Credit Administration (FCA) and the agricultural banking industry support the conclusion that this ratio indicates the farm's overall financial soundness and risk-bearing ability.

The USDA ERS Information Bulletin, Number 495, dated July 1985, segregates debt-to-asset ratios into four categories.

a. *Under 40 percent.* Generally few financial problems and very strong net worth (no apparent financial problems).

b. *40–69 percent.* Problems meeting principal repayment, but adequate net worth (serious financial problems).

c. *70–99 percent.* Problems meeting principal repayment and current interest due with declining net worth (extreme financial problems).

d. *100 percent or more.* Severe problems meeting principal and interest commitments. The farms are technically insolvent and sale of the farm's assets would not be sufficient to retire its debts (technically insolvent).

The ERS report also states that at current prices, farming costs, and asset values, most farms start having difficulties meeting principal repayment commitments at debt-to-asset ratios of around 40 percent. Above 70 percent, farmers generally have problems meeting their interest and principal

repayment commitments. With debt-to-asset ratios above 70 percent, many farms start sliding toward insolvency. When a farm reaches the final critical point, the total liabilities exceed the total value of owned assets.

A recently concluded GAO analysis (entitled "Financial and General Characteristics of Farmer Loan Program Borrowers," dated January 1986) of 1983 and 1984 FmHA FARMS data on 63,288 FmHA borrowers, disclosed that 20% or 12,448 FmHA borrowers were technically insolvent (100% or over) debt-asset; 31% or 19,743 borrowers had a 70 to 99% debt-to-assets; 32% or 20,076 had a 40 to 69% debt-to-assets and 11,021 or 17% had a debt-to-assets percentage under 40. More recent valuations or 1986 data from FmHA FARMS, disclosed that the composite average of 6,513 FmHA borrowers had an average debt-to-asset ratio of approximately 76%.

Therefore, based upon these studies and recorded findings, FmHA believes that this ratio and the standards (or thresholds) used are sound and reasonable when used in the FmHA pre-application and the completed application loan risk evaluation.

II. *Net cash farm income (before interest payments) minus family living expenses/total assets. [This ratio or return on assets is to be used in the pre-application and the completed application packages].* Net cash farm income (before interest payments) is defined as the gross cash farm income from farm operation minus cash operating expenses before interest payments. The net cash farm income (before interest payments) is derived from cash flow statements. FmHA recognizes that the derivation of this income does not take into account allowances for depreciation of capital.

According to ERS studies (Agriculture Information Bulletins 495 and 500) and a GAO review, dated September 1986, entitled "Farm Finance—Financial Condition of American Agriculture, as of December 31, 1985," farmers actual rates of return on assets have improved in 1985 when compared to 1984. The 1984 return was approximately 4.8 percent while the data for 1985 reflected 6.6 percent return on assets. The calculations used by ERS in obtaining the net returns to assets, excluded interest and any imputed returns to operator's labor and management. A recent review of FmHA FARMS data for the 1986 crop year or planned year for 19,504 FmHA borrowers indicates a planned 4.9 percent average expected return on assets.

Therefore, based upon foregoing resource data, FmHA believes that this ratio and the standards or thresholds to be used for this ratio are sound and reasonable in FmHA loan making.

III. *Current assets/current liabilities. [This ratio is to be used in the pre-application evaluation only].* This ratio has a long history of use by agriculture lenders and FmHA. It measures the ability of a farming operation to make payments in a timely fashion, without disrupting the operation. This ratio is currently used by a number of FCA and agricultural banking officials in determining risk. Generally, a value of over 2.0 is a number one (1), or low risk, while under 0.9 represents a high risk. However, feedlots and cash grain operations should have a 3:1 to 5:1 valuation range according to a study published in the Journal of Commercial Bank Lending (February 1982), by David M. Kohl and Stanley O. Forbes, previously referred to in the total debts/total assets part of this discussion.

Based upon the ongoing supportive data, FmHA believes that the current ratio and the proposed standards or thresholds to be used in the *preliminary* application processing by the FmHA County Supervisor are sound and reasonable.

IV. *Balance available/total debt payments. [This ratio is to be used in the completed loan evaluation only].* For definition, the balance available is the gross cash farm income minus (all cash farm operating expenses + family living expenses + capital purchases) *plus* (non-farm income + cash carry-over + interest) *plus* (loans and other operating credit). Total debt payments include all principal and interest payments due (including delinquencies), all open accounts which are due, including income, and Social Security taxes due. This is commonly known as the cash flow part of FmHA loan making and evaluation.

This ratio is extremely important to all agriculture loan making officials since the data comes from the planned budget or crop year and demonstrates the ability of the borrower to repay debts. This ratio is now used by FmHA loan approving officials to determine if an applicant has repayment ability or at least a 100% cash flow.

In a study completed by David Kohl and Stanley O. Forbes, as previously referred to in the current ratio part of this discussion, they concluded that a repayment cushion is one of the most important factors to consider in agricultural lending today and that most agricultural lenders like to see at least a 20 percent cushion. The findings of this study also disclosed that agribusinesses having a history of income stability can survive with a 10 percent cushion.

Therefore, based upon the ongoing supporting data, FmHA believes that this ratio and the standards to be used in the evaluations of a completed FmHA loan application by the FmHA loan approving official are sound and reasonable.

5. The Agency proposes to amend Subpart B of Part 1924 of its regulations to require each State to issue unit prices for farm commodities each year. Presently each County Supervisor with each borrower determines the unit price for farm commodities. This has caused a wide variation in prices for the same commodities for an area. The projection of cashflows is seriously affected by changes in prices. Applicants are not treated equally. The price list will standardize prices for an area and eliminate much of the debate over the issue.

The amendment will also incorporate the use of a positive cash flow which will clarify the feasibility of a farm and home plan. Cash flow is widely used by financial institutions as an element for evaluating applications for credit. It assists in determining the repayment of credit for an applicant. It will provide additional guidance to the FmHA field office staff in reviewing applications for credit.

The amendment will also clarify certain procedures regarding the release of sales proceeds and also the actions to be taken when Form FmHA 1924–26 is returned by a borrower.

6. The agency proposes to revise its loan making regulations to provide for a uniform EO statement in the introductory section of each regulation and emphasize graduation in the objective section of the regulation rather than the "conducting a successful operation." The objective is to attempt to improve the borrower's operation so that government assistance is not perpetuated. A borrower could be conducting a successful operation but never get to the point where the borrower could obtain credit elsewhere.

7. The agency proposes to amend its loan making regulations to add authority for making FO, SW, and OL guaranteed loans to insured FO, SW, and OL borrowers, provided there is separate and identifiable security. This will provide a broader authority for making guaranteed loans and facilitate transition from direct loans to other credit. It is also proposed that the County Supervisor will emphasize and encourage applicants to use the guaranteed loan programs. All members of an entity for an insured Farmer Program loan will now be required to pledge their individual assets for the

FmHA debt for the entity to better protect the government's interest and applicants will be encouraged to apply for a guaranteed loan or obtain conventional credit. This will strengthen the provision for the test for credit elsewhere. FmHA proposes to have each partner and joint operator sign the promissory note as individuals, as well as having someone sign on behalf of the partnership and joint operation itself. For cooperatives and corporations, FmHA proposes to have the appropriate officers execute the note on the entity's behalf and have the operator(s) of the farm sign the note as an individual. Other individual members will not be required to execute the note.

Joint operations and partnerships can be based on an oral agreement and can be instantly dissolved. There is no assurance that the partnership or joint operation will be in existence to meet the FmHA obligation. Therefore, it is necessary to have all members sign the note to insure adequate protection of the government's interest.

Cooperatives and corporations are based on more than an oral agreement. Articles of Incorporation must be filed with the proper public agency or official. The by-laws and adopted resolutions state who is authorized to sign notes and bind the cooperative or corporation. Also, formal action is necessary to dissolve such entities. Therefore, FmHA will not require all members to sign the note.

8. The agency proposes to amend its regulations to allow the State Directors to reverse either a favorable or unfavorable County Committee decision. Occasionally County Committees make decisions based on personal opinions rather than on regulations. The borrower will have the right to appeal such a decision.

9. The agency proposes to amend its regulations to limit the use of balloon payments. Balloon payments often mask cash flow problems and cause severe losses to the government. Security can depreciate by the years. Balloon payments sometimes encourage borrowers to overspend rather than to face up to their true financial problems.

10. The agency proposes to amend its regulations to prohibit loans to previous borrowers who were not successful farmers. The provision is substantially the same as that contained in the single-family housing loan making regulation. This will strengthen FmHA credit requirements and should reduce chances for future losses to the government. Usually such borrowers have definite weaknesses that are difficult to overcome and which caused the loss.

11. The agency proposes to amend its regulations to allow loans to a member of an entity as well as the entity itself. This will correct any inconsistencies in the regulations. It will also clarify the amount that can be loaned in such cases.

12. The agency proposes to amend its regulations to allow farm ownership loans on a leasehold interest in Hawaii as permitted by statute. A great deal of the land is available for farming on long term leases.

13. The agency proposes to amend its regulations to provide additional guidance on defining a nonfarm enterprise, character, borrower, and management ability. Many of the projects now listed as nonfarm enterprises were never really recognized by most people as farming enterprises. Some people in the past have been offended when told they did not have the character needed for a loan. They thought it implied poor moral character. Since the agency has started loaning to corporations, cooperatives, partnerships, joint operations as well as individuals, there has been confusion on just who the borrower was. The new definition of borrower should clarify the term. If a husband and wife both apply as applicants they will be considered a joint operation or one of them may apply independently as an individual. The amendment proposes to require all members of an entity to provide a current financial statement and to pledge all their assets along with the assets of the entity to secure the loan. This will strengthen the test for credit. It will increase the protection of the government's interest and should reduce government losses. However, there will be a provision for the release of additional security to other creditors when the remaining security is adequate and the release of security is necessary for additional credit to continue the farming operation. This will facilitate graduation of borrowers to other credit. It will also discourage people from applying for FmHA assistance when they really could get credit elsewhere.

The definition of a joint operation was revised to clarify the difference from a partnership.

14. The agency also proposes to amend its regulations to require that crop insurance be obtained when loans are made for crop expenses. Natural disasters can be very devastating for any farmer. Farmers with FmHA credit are even more vulnerable because of their indebtedness. Crop insurance will decrease the risk for both the borrower and the government and the cost is not that great.

15. The agency proposes a general revision of Subpart A of Part 1945, "Disaster Assistance—General." The major items are as follows:

*Section 1945.6 (c)(1) and (2).* The terms "Major disaster" and "Presidential emergency" are being redefined at the request of FEMA. These terms have been redefined and put in FEMA's regulations and SBA has agreed to do the same. Therefore, in order to have consistency and uniformity for Federal disaster regulations, FmHA's EM regulation (1945–A) is revised accordingly.

*Section 1945.6 (e).* The term "farmers" has been redefined to add "actually engaged in their operation at the time a disaster occurs." This change is made for clarification purpose only.

*Section 1945.20 (b) (2) (iii).* This paragraph is changed because of the FmHA National Office's need for proper data to calculate production losses sustained in a county(ies) requested for Secretarial disaster designation. In order to determine if a county(ies) meets the Secretary's 30-percent countywide loss criteria for a designation, 5-year yields and 3-year price data are required to make the calculations. To have an equitable norm of yields, 5-year yields of each commodity grown in the county(ies) during the disaster year are required. Also, to insure a broad economic price base, the average prices received 3 years immediately preceding the disaster year for commodities grown in the county during the disaster year is required.

*Section 1945.26 (b), (c) and (d).* These paragraphs have been revised to show the current relationship between FmHA and SBA. The objective is to prevent the duplication of benefits. SBA is no longer authorized to make disaster loans to compensate farmers for physical losses sustained in livestock and crop production, etc. However, SBA can make disaster housing loans to farmers as well as others.

*Section 1945.28.* This section is added to explain the relationship between ASCS and FmHA as defined in the Memorandum of Understanding, Exhibit C of Subpart JJ of Part 2000 (a copy of which is available in any FmHA office).

Note.—All other changes made in the Subpart A of Part 1945 are for editorial and clarification purposes.

16. The agency proposes a general revision of Subpart D of Part 1945, "Emergency Loan Policies, Procedures, and Authorizations."

*Section 1945.154 (a), (4), (9), (11), (12), (16), (19), (20), (23), (25), (26), (27) and (28).* These paragraphs are changed to

add and delete several definitions, and to further redefine or clarify the definitions of a "borrower" "established farmer" "farm" add "farm and home plan," add "household contents" add "irregular payment schedule," redefine "joint operation," clarify "nonfarm enterprise," "partnership," "physical loss," "production loss," and add "positive cash flow."

In § 1945.154 (a)(4) and (20), "borrower" and "joint operation" were redefined to coincide with all other Farmer Program regulations in order to provide for consistency and uniformity in servicing cases under the loan servicing regulations; etc.

The remaining paragraphs listed above are revised to conform with the FO/OL regulations and to provide for more efficiency of operations.

*Section 1945.156 (b)(1) and (3).* In § 1945.156 (b)(1), the term "principal" is deleted in order to require *all* entity members, partners, stockholders, or joint operators to pledge their personal assets along with the entity's assets in an effort to obtain credit elsewhere. By deleting the term "principal," all the owners of an applicant entity must meet the "test for credit" required by FmHA before an EM loan can be made. This change will enable FmHA to tighten its "test for credit" requirement for entity applicants, and thus reduce the number of loans made to entity applicants.

Paragraph (b)(3) of this section is revised to delete the term "principal" in order to require *all* owners of an applicant entity to list their individual assets in addition to the entity's assets, setting forth which are "essential" and "nonessential?" All "nonessential assets," they must agree to sell, as an agreement/condition for loan approval. The proceeds from the sale of such "nonessential assets" will be used to reduce the amount of EM loan(s) requested. This change will reduce the amount of EM funds advanced to entity applicants.

*Section 1945.161 (c) and (d).* The changes made in § 1945.161 (c) and (d) are editorial in nature, and *are needed to update these paragraphs so as to provide consistency in operations.*

Paragraphs (d)(1) through (5) are removed. This change is made to require *all* members or owners of an applicant entity to furnish current personal financial statements as a part of their EM application package.

*Section 1945.162 (c) (g), (i), (l) and (m).* Paragraph (c) is revised to delete "principal" members of an entity applicant, and to show that all EM applicants must derive more than 50 percent of their income from all sources from their farming operations. This change will ensure that EM loans are made to bona fide established farmers and not to farmers who get the majority of their income from off-farm sources.

Paragraph (g) is revised to coincide with the FO/OL regulations. This change will provide for consistency and uniformity in operation of the EM program.

Paragraph (i) is revised to make cross reference to OL regulation, in order to provide uniformity and consistency.

Paragraph (l) is revised to make an editorial change, so as to provide clarity.

Paragraph (m) is added to show reference to EM loans being available to eligible FmHA employees or members of their families. Eligibility is cross referenced to § 1945.184. EM loans are presently authorized to FmHA employees and their family members under FmHA Instruction 2045–BB. This added provision will attribute to efficiency and uniformity in the operation of the EM program.

*Sections 1945.163 (a)(1)(i), (ii), (iii), (iv); (a)(2)(ii), (iii), (iv), (v), (vii), (ix), (xvii); (b)(5), (6) and (6)(v); (c); (d) and (e).* Paragraphs (a)(i) thru (iv) have been revised and renumbered. These paragraphs are revised to clarify the order and source(s) of records that can be used to establish a loss claim. These changes will provide for consistency and uniformity of operations by the field staff.

Paragraphs (a)(2)(ii), (iii), (iv), (v); (viii), (ix), (xvii). The changes made in these paragraphs are for clarity and editorial purposes, and to provide guidelines and examples on how to calculate quality losses. The changes will result in efficiency and consistency of operations by the field staff.

Paragraphs (b)(5) and (6) and (6)(v) are revised for clarity and editorial purposes, and to provide guidelines for calculating replacement cost to essential machinery and equipment damaged by a disaster(s). These changes are necessary for efficiency, consistency, and uniformity of the field staff in administering the EM program.

Paragraph (c) is added to provide guidelines for calculating household content losses. These guidelines are needed by the field staff to ensure consistency and uniformity in operations. This is an authorized Subtitle B purpose and is necessary in cases where the farmer would be unable to remain on the property and continue the farming operation.

Paragraphs (d) and (e) are revised for clarity and editorial purposes, and to delete reference to SBA physical disaster loans. These are editorial changes needed to provide for efficiency and clarity of procedures.

*Section 1945.166.* This section is revised for editorial purposes and to provide for more conformity with the operating loan and farm ownership loan programs.

*Sections 1945.167 (b), (c)(3) and (j)(2).* These paragraphs are revised, with paragraph (b) added, to provide clarity and efficiency with respect to the EM loan limitations. Also paragraph (b) is added to enable field staff to conserve FO/OL/SW funds by using EM funds first for applicants suffering qualifying losses in a designated area(s).

*Sections 1945.168(b) (i), (ii) and (iii).* These paragraphs are revised to clarify the repayment terms on EM loans made for production expenses and the purchase of livestock, etc. These changes are needed to provide adequate repayment terms for applicants who have sufficient collateral to secure their loans, over and beyond the crop and livestock production being financed.

*Sections 1945.169 (a)(4), (e), (f), (g), (h) and (q)(3).* Paragraph (a)(4) is added to require the best lien obtainable on all assets owned by the applicant(s), including the member's assets of an entity applicant. This change will enable FmHA to secure its EM loans adequately and prevent losses to the government.

Paragraph (h) is added to prescribe farm machinery, livestock and/or real estate as the type of security authorized to secure EM loans made for personal household contents.

The remaining paragraphs listed above under this section are revised for editorial and clarification purposes, which will add to the efficiency and consistency of operations in the field.

*Section 1945.173(b)(1)(ii).* This paragraph is revised to delete the provision for continuing with an EM borrower(s) who allows flood insurance to lapse and has suffered new flood or mudslide losses. This change is needed to protect the interest of the government and help prevent further losses on EM loans to borrowers who fail to maintain required flood insurance.

*Section 1945.180 Introductory paragraphs, (a) and (b).* Paragraphs (a) and (b) are deleted to be consistent with FO/OL regulations. This introductory paragraph is revised to show a cross reference to § 1910.4(f) of Subpart A of Part 1910, which sets out the procedures to follow in timely processing EM applications. These changes will add to the efficiency of operations by our field staff.

*Sections 1945.183 (a)(4)(i), (ii), (iii); (b)(1), (6) and (9); (c)(2) and delete (3); (d)(1), (2), (3); (e)(1), (2), (3) and (4).* These paragraphs are revised for

editorial purposes, to clarify FmHA's relationship with SBA in connection with handling applications for disaster housing purposes so as to prevent a duplication of benefits, and to clarify and further define the administrative actions to be taken by the field staff before an EM loan(s) can be approved.

Also, a cross reference is made to § 1910.4(b) of Subpart A of Part 1910 for the loan risk index factors which must be considered before an EM loan(s) can be approved. These paragraphs are changed to enhance the efficiency and consistency of operations by the field staff and to minimize losses to the Government due to unsound EM loan making and duplication of benefits.

*Section 1945.184 Added with (a) thru (h).* This section is added to provide proper guidelines for processing EM loans to FmHA employees, including family members and County Committee members. Heretofore, this authority for making EM loans to FmHA employees was prescribed in FmHA instruction 2045–BB only, and not referenced in Subpart D of Part 1945. This change will add to the efficiency and consistency of administration of the EM program by the field staff. Furthermore, the guidelines provided in this section will ensure sound EM loanmaking to eligible FmHA employees.

17. The agency proposes to revise Subpart A of Part 1951, "Account Servicing Policies," to clarify the procedure evaluating the need for the limited resource interest rate for operating or farm ownership loans, deferring, rescheduling or reamortizing loans and the procedure for processing these servicing actions. Also provisions implementing section 1318 of the Food Security Act of 1985 for farm debt restructure and conservation easements have been added. This provides for the acquisition of an easement in the real estate of a delinquent FmHA borrower if the real estate is wetland, upland, or highly erodible land. Easements must be for a period of at least 50 years; used for conservation, recreational and/or wildlife purposes; and will be obtained from FmHA borrowers by cancelling a portion of the borrower's debt.

Appropriate amendments are being made to other regulations. The amendment also removes the restriction of only consolidating loans of the same interest rate. This will allow more loans to be combined. It will simplify accounting procedures and reduce the number of payments borrowers will have to make. It will not change the amount of the total payment but there may only be one consolidated loan rather than several loans.

18. The agency proposes to revise Subpart A of Part 1955 to enable FmHA, when it is in the best interests of the Government, to accept a voluntary conveyance or to allow a cash sale or a transfer and assumption after an FmHA borrower's account has been accelerated. However, FmHA will not postpone liquidation action to allow the borrower additional time to accomplish such transactions. This change is needed to reduce foreclosure costs to the Government and to save employee time. Transfers and cash sales will allow the borrower to obtain any equity in the property. In the case of an FmHA deficit, the release of liability will be expedited. This change should be beneficial to both the borrowers and the Government.

Other changes are being made to 1955–A to conform to revisions being made in other farmer program loan servicing regulations.

19. The agency proposes to revise Subpart B of Part 1955, "Management of Property" to: (1) Allow the discontinuation of payments to prior lienholders on inventory property when it is in the best interest of the Government. In certain cases real estate has declined in value to the point where there is no longer any remaining equity left for the Government; (2) provide for the maintenance of non-essential farm buildings or facilities if historic or a health/safety problem exists. Certain situations require such action by the agency; (3) allow suitable farm inventory property to be reclassified to surplus property if it has not been sold within a year because of lack of eligible buyers. This change is also being made in Subpart C of Part 1955. This is a GAO audit recommendation. It should allow the agency to move property out of inventory faster and reduce Government costs; (4) provide more guidance for handling required SCS plans on inventory property especially for the handling of highly erodible land. This will make FmHA regulations more compatible with SCS requirements; (5) provide clarification on approval authority for credit sales.

20. The agency proposes to revise Subpart A of Part 1962, "Servicing and Liquidation of Chattel Security," to conform the release of liability of a borrower with that in the real estate servicing regulations. The definition of a borrower will be clarified as explained elsewhere in this document. The amendment also revises $1962.17, "Disposal of Chattel Security, Use of Proceeds and Release of Lien," and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security." The form is available by contacting the name indicated in the **"FOR FURTHER INFORMATION CONTACT"** section at the beginning of this document.

21. The agency proposes to revise Subpart A of Part 1965, "Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases" to: (1) Expand and clarify the use of Exhibit F of Subpart A of Part 1955 of this chapter for making FmHA accounts due and payable for debt settlement action; (2) Clarify that, when FmHA executes a subordination of its real estate lien to another, the combined debts against the property cannot exceed its present market value. (3) Clarify that the proceeds of the sale of real estate cannot be released for operating and/or family living expenses; (4) Clarify the present conflicting statements in regulations regarding a borrower's failure to operate the farm; (5) Allow the State Director to obtain an appraisal from a qualified appraiser outside the agency when it is necessary; (6) Clarify the use of an accelerated repayment agreement in lieu of foreclosure and provide for the reclassification of such a loan as an NP loan. These changes are mainly for clarification and to provide guidance and assistance in servicing loans.

In addition, in order to prevent routine liquidation of a SFH loan when the dwelling so financed is located on a nonfarm tract along with FP loans, revisions have been made to (1) provide for release of valueless junior liens on the nonfarm security; (2) allow consideration of continuing with the SFH loan after liquidation of the FP loans; and (3) where the borrower has equity in the SFH nonfarm tract, to allow "capture" of that equity to be paid to FmHA upon sale of the nonfarm property or when the borrower ceases to occupy the dwelling as his/her primary residence.

22. The agency proposes to prohibit the use of OL loan funds for the payment of cash rent in Subpart A of Part 1941 of this chapter. During the past decade it became customary for land owners to switch from a share lease agreement to up-front cash leases. This change came about in part due to the cost-price squeeze that many farmers were experiencing and they felt that the only alternative that they had was to expand their operations to overcome what they viewed as a short-run problem. This resulted in many farmers approaching landowners and offering to pay up-front cash rent. They would assume all the risk and in return guarantee the landowner a return on

his/her investment. Once this practice caught hold, many landowners would allow farmers to bid against each other as to who would be willing to pay the highest price for the opportunity to operate a certain farm. The landlord who was not concerned about the productivity or the long range conservation effects that this practice might have on the farm, was more than willing to allow the farm to be leased to whoever would pay the highest rent. In these cases, there was no consideration given to how good a farm manager the successful bidder might be. FmHA does not want to contribute to these practices.

Due to this practice in many parts of the United States and in order for FmHA to effectively manage its limited resources and to provide sound financial supervision to its farm borrowers, FmHA will no longer provide insured operating monies for up-front cash leases. In the past, this practice has resulted in FmHA farm borrowers assuming additional risk which further jeopardizes their opportunities in becoming successful. The increased interest cost to a farm borrower can increase a cash lease by up to $5.00 an acre, which in many cases, makes it unprofitable for the farmer to operate the land. When this happens, the farmer then has to rent cheaper, less productive land, but other expenses will increase due to the extra time and effort needed to produce a crop. Another factor in the decision, was that there could be times when FmHA could be perceived by other farmers in the area, as creating artifically high cash market rent. FmHA's major concern is that FmHA is dealing with a farm borrower who is already experiencing financial hardship due in part to high interest cost, cost-price squeeze, the belief that one has to get bigger in order to survive and weather disasters. The farm borrower should not have to bear all the risk which results from a cash lease. It is not advantageous to FmHA borrowers to increase cost with no guarantee that the returns will be any greater. A landlord who share-leases a farm will still have an active voice in the operation of the farm and will be deeply interested in maintaining the productivity of the farm as it will result in a higher return to the owner over the years. The owner can also provide supervision regarding productive practices that will not only benefit the owner but also provide additional supervision above that which FmHA provides its farm borrowers, thus increasing the opportunities that the borrower has in becoming more successful.

23. The agency proposes to revise Subpart B of Part 1980, "Farmer Programs Loans," to conform with applicable changes explained elsewhere in this document for the insured regulations. These major changes are: (1) The definitions non-farm enterprise and positive cash flow; (2) Clarification that separate and identifiable collateral is required for insured and guaranteed loans. (3) Prohibition of balloon payments when consolidation, rescheduling, reamortization or deferral actions are contemplated; (4) Deletion authority to guarantee EM loans; (5) Clarification of limitations on the use of operating loan funds; (6) Outline of loan dollar amount limitations when an individual is also part of an entity that is indebted and vice-versa; (7) Outline of chattel and real estate requirements for operating loans; (8) Authorization of application processing preference for currently indebted borrowers; (9) Clarification of the requirements that members, stockholders, partners and joint operators must meet; (10) Redefinition of the word character to emphasize credit history and repayment record; (11) Redefinition of the word borrower. We also propose to (1) Prohibit the use of demand notes because some lenders obtain a guarantee from FmHA and immediately demand full payment from the borrower, particularly if it is a problem case. The borrower never has a chance to benefit from the guarantee. The result is that FmHA usually winds up paying the bank for a loss. (2) Outline FmHA's and the lender's responsibilities in connection with monitoring lines of credit. The regulations were rather vague on this issue which often led to a misunderstanding of the lender of what FmHA's position was on the duties of the lender. This should clarify the matter. (3) Delete the requirement that loans must meet the initial security requirements when consolidation, rescheduling, reamortization and deferral actions are contemplated. This was creating a hardship on both the lender and the borrower. This conforms to the insured loan program. (4) Provide for systematic review by FmHA of lender files. This provides guidance to the FmHA field staff and will inform the lender of what the review entails. (5) Address of the reorganization of ALP-FCS member institutions under Exhibit A, approved lender program. This was necessary because of the reorganization of ALP-FCS member institutions. (6) Reference new definitions for current, intermediate and long term assets. This was a result of discussions with other lenders. (7) Provide a liquidation guide. This will clarify the procedures for liquidation of an account.

24. Form FmHA 449-6, "Application for Guaranteed Loan (Farmer Programs)," and Form FmHA 410-1, "Application for FmHA Services," are revised to provide pertinent information on entity applicants since FmHA has the authority to make loans to corporations, cooperatives, partnerships and joint operators.

A source and use of funds statement has been included on the application, as well as a revised financial statement. The changes will allow FmHA to obtain necessary financial information from individual members of an entity as well as the entity itself. These revisions have been developed with advice from the Farm Credit Administration and other lenders in the agricultural community in an attempt to standardize farm applications.

25. The agency proposes to remove obsolete material and make other necessary clarification and editorial changes.

**List of Subjects**

*7 CFR Part 1809*

Loan programs—Agriculture, Real property-Appraisals, Rural areas.

*7 CFR Part 1900*

Appeals, Credit, Loan programs—Housing and community development.

*7 CFR Part 1902*

Accounting, Banks, Banking, Grant programs—Housing and community development.

*7 CFR Part 1910*

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

*7 CFR Part 1924*

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

*7 CFR Part 1941*

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

*7 CFR Part 1943*

Credit, Loan programs—Agriculture, Recreation, Water resources.

*7 CFR Part 1945*

Agriculture, Disaster assistance, Intergovernmental relations, Loan programs—Agriculture.

*7 CFR Part 1951*

Account servicing, Credit, Loan programs—Agriculture, Loan programs Housing and community development, Mortgages.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

*7 CFR Part 1962*

Crops, Government property, livestock, Loan programs—Agriculture, Rural areas.

*7 CFR Part 1965*

Foreclosure, Loan programs—Agriculture, Rural areas.

*7 CFR Part 1980*

Agriculture, Loan programs—Agriculture, Loan programs—Business and Industry—Rural development assistance, Loan programs—Housing and community development.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

## Part 1809—APPRAISALS [REMOVED AND RESERVED]

1. The authority citation for Part 1809 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Part 1809 is removed and reserved.

## PART 1900—GENERAL

3. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

## Subpart B—Farmers Home Administration Appeal Procedure

* * * * *

4. Section 1900.55 is amended by redesignating paragraphs (d) through (f) as (e), (g) and (h), by revising newly designated paragraphs (e), (g) and (h) and by adding new paragraphs (d) and (f) to read as follows:

### § 1900.55 FmHA actions to limit the need for appeals.

* * * * *

(d) Farmer program loan borrowers who are sent Form FmHA 1924–25 and who complete Part I. of Form FmHA 1924–26, and who are found ineligible for servicing relief will be sent Exhibit B–7. Exhibit B–7 will repeat the reasons for the intended adverse action which were listed on Form FmHA 1924–25 and will also list the reasons for rejecting the request for servicing relief. Exhibit B–7 gives these borrowers an opportunity for a conference with the decision maker before the appeals process begins. This conference cannot be waived by FmHA. If the borrower or the borrower's representative fails to schedule or attend the conference, the borrower is still entitled to a hearing and will be notified in writing of the hearing date, time and location; Exhibit B–4 (Attachment 1) will be attached to this letter.

(e) Farmer program loan borrowers who are sent Form FmHA 1924–25 and who complete Part II. B., II. C., or II. D. of Form FmHA 1924–26 are entitled to a conference with the decision maker before the appeal process begins. The conference cannot be waived by FmHA. The County Supervisor will notify the borrower in writing of the date, time and location of the conference. If the borrower or the borrower's representative fails to schedule or attend the conference, the borrower is still entitled to a hearing and will be notified in writing of the hearing date, time, location, and the identity of the hearing officer. Exhibit B–4 (Attachment 1) will be attached to the letter.

(f) Farmer program loan borrowers who are sent Form FmHA 1924–25 and who complete Part II. E. of Form FmHA 1924–26 or who fail to return Form FmHA 1924–26 within the required time will be sent Exhibit B–6.

(g) This paragraph applies only to those situations covered by § 1900.55 (c), (d) and (e). When the person or organization officials attend a meeting or conference with the decision making official and the meeting or conference results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting or conference, setting forth the conclusions reached. If the meeting or conference does not result in a resolution of the matter, Exhibit B–3 with attachment Exhibit B–4 will be sent without revision to notify the person or organization of appeal rights within 7 calendar days of the meeting or conference.

(h) Except situations covered by § 1900.55 (c), (d) and (e) of this subpart, FmHA must offer to meet with the affected parties to explain the adverse decision before the appeal process will begin. Exhibit B–7 with attachment Exhibit B–4 will be used for this purpose, except in cases involving acceleration of accounts which are provided for in § 1900.56 (a) of this subpart. This meeting cannot be waived by FmHA. If the appellant or the appellant's representative requests a meeting and hearing but fails to schedule/attend this meeting, the appellant is still entitled to a hearing. When the person or organization officials attend a meeting with the decision making official and the meeting results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting, setting forth the conclusions reached at the meeting. If the meeting does not result in a resolution of the matter, Exhibit B–3 with attachment Exhibit B–4 will be used without revision to notify the person or organization of appeal rights within 7 calendar days of the meeting.

5. Section 1900.56 is amended by removing paragraph (c), by redesignating paragraphs (d) and (e) as (c) and (d), and by revising paragraph (a) to read as follows:

### § 1900.56 Appeal from an initial FmHA decision.

(a) Farmer program loan borrowers who are sent Forms FmHA 1924–25 and FmHA 1924–26 (in accordance with Subpart A of Part 1965, Subpart B of Part 1924, Subpart A of Part 1962, or Subpart C of Part 1950 of this chapter) are given an opportunity to appeal before the adverse action is taken unless Part II E or Part III or IV of Form FmHA 1924–26 was completed.

* * * * *

6. Section 1900.58 is amended by revising paragraph (d) to read as follows:

### § 1900.58 The review.

* * * * *

(d) The appellant will be informed of the final decision by letter. A copy will be sent to the decision maker, the hearing officer and any other official servicing the account. If the decision is upheld, the letter must contain the following statement: "This review concludes the administrative appeal of your case." If the appellant is a Farmer Program loan borrower who was sent Forms FmHA 1924–25 and 1924–26, the letter must contain the above sentence and the following two sentences: "FmHA will proceed to take the adverse action noted on Form FmHA 1924–25. You are not entitled to any further appeal in connection with the adverse action."

7. Exhibit B–3 to Subpart B of Part 1900 is revised to read as follows:

**EXHIBIT B-3 TO SUBPART B—LETTER FOR NOTIFYING APPLICANTS AND BORROWERS OF UNFAVORABLE DECISION REACHED AT THE PRE-HEARING MEETING OR CONFERENCE**

UNITED STATES DEPARTMENT OF AGRICULTURE
*Farmers Home Administration*
(Insert address)

Date: _____

Dear _____:

We appreciated the opportunity to review the facts relative to [your application/request for FmHA services] [the assistance you are presently receiving]. We regret that our [meeting] [conference] with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action).

See attachment for your appeal rights.

The hearing officer will be _____ (name and title). A request for a hearing should be sent to the hearing officer in care of this office _____[1]

*(The following paragraph for individual applicants only):*

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

(Decision Maker)
(County Supervisor for County Committee)

_____

(Title)

8. Exhibit B-4 Attachment 1 to Subpart B of Part 1900 is added to read as follows:

**Exhibit B-4 to Subpart B—Appeals of Adverse Actions**

* * * * *

*Attachment 1—Appeals of Adverse Actions*

The hearing will generally be completed within 45 days of the receipt of your request.

You or your representative [or legal counsel] may come to this office anytime during regular office hours in the 10 days following the date of this letter to examine or copy relevant non-confidential material in your file. Photostatic copies will be provided in accordance with the Freedom of Information Act.

Eleven days from the date of this letter, we will forward the file, any additional documents, and your request to the Hearing Officer.

The Hearing Officer will contact you regarding a time and place for the hearing. You may have a representative [or legal counsel] with you and may present your own witnesses. The FmHA decision maker or representative will be there and available for you to cross-examine, as will all other witnesses presented by FmHA. If you wish to have other FmHA employees present as your witnesses, let the Hearing Officer know and, if possible, they will be there.

At your own expense, you may tape record the hearing or have a transcript made. If FmHA records the hearing you may purchase a copy of the tape for the cost of reproducing it.

At any time up to the day of the scheduled hearing you may request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the FmHA file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

Within 30 calendar days after the hearing (or the date you notify the Hearing Officer that you elect to waive the opportunity for a hearing) the Hearing Officer will advise you by letter of the decision made, the reasons for it, and, if your request for assistance is not granted, what further administrative appeals may be available to you.

A more complete description of the hearing (A Guide to Conducting an Appeals Hearing) may be obtained from any FmHA office.

(The following paragraph applies to individual applicants only.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

9. Exhibit B-7 to Subpart B of Part 1900 is revised to read as follows:

**Exhibit B-7 to Subpart B—Letter for Notifying Applicants, Lenders and Borrowers of Adverse Decisions Where the Decision is Appealable**

(Use when meeting with decision maker is the option of the appellant.)

UNITED STATES DEPARTMENT OF AGRICULTURE
*Farmers Home Administration*
(Insert address)

Date:_____

Dear_____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] are canceling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call the County Office (insert phone number) to request a meeting with [this office] [the County Committee] within 15 calender days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative (or legal counsel) with you.

You also have the right to appeal this decision to a hearing officer instead of, or in addition to, a meeting with [this office] [the County Committee]. The hearing officer will be (name and title_____). If you would like to appeal now instead of scheduling a meeting, a request for a hearing should be sent to the hearing officer in care of this office:

_____

(Address)

(Use the following paragraph for individual applicants only.):

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

(Decison maker) (County Supervisor for County Committee)

_____

(Title)

10. Exhibit D to Subpart B of Part 1900 is revised to read as follows:

**Exhibit D to Subpart B—Hearing/Review Officer Designations**

**Note.**—A Hearing Officer must in all cases be an individual who was not significantly involved in the decision being appealed.

| Decision maker or decision | Hearing officer | Review officer |
|---|---|---|
| County Supervisor For Single Family Housing cases. | District Director or person selected by the State Director. | State Director or designee. |

[1] Omit this sentence if the borrower has checked Part IIA, IIB, IIC, or IID of Form FmHA 1924-26.

| Decision maker or decision | Hearing officer | Review officer |
|---|---|---|
| For Farmer Program (FP) cases and FP Intent to foreclose real property or chattels. | District Director from another district or a Farmer Program Specialist selected by the State Director. | State Director or designee. |
| County Committee. | State Director or designee. | Deputy Administrator, Program Operations or designee. |
| District Director. | State Director or designee. | Deputy Administrator, Program Operations or designee. |
| State Director.. | Deputy Administrator, Program Operations or designee. | (No review). |
| Division Director or Assistant Administrator. | Deputy Administrator, Program Operations or designee. | (No review). |
| Deputy or Associate Administrator. | Administrator or designee. | (No review). |
| Decision to foreclose Real Estate (For Single-Family Housing accounts). | State Director or designee*. | Deputy Administrator, Program Operations or designee. |
| (for accounts serviced in the District Office). | Deputy Administrator, Program Operations or designee. | (No review). |

*The individual designated as Hearing Officer may not be an employee who is supervised by the person who approved the foreclosure and accelerated the account, nor can the designee have been involved in the decision to foreclose.

Notes

1. District Director also means Assistant District Director or District Loan Specialist.

2. County Supervisor also means Assistant County Supervisor with loan approval authority.

3. Designee is the person designated by the Hearing/Review Officer to conduct a hearing or review. The designee signs the decision letter to the appellant without the concurrence of the original Hearing/ Review Officer except:

a. For hearings on County Committee decisions. For these hearings the State Director or Acting State Director may designate other persons to act on his or her behalf in conducting the hearing; however, the State Director or Acting State Director must sign the hearing decision letter.

b. When the Hearing/Review Officer, designated by the Deputy Administrator, Program Operations, is not a member of the National Office staff, the complete case file, hearing notes, tape recordings, and a recommended decision will be sent to the Deputy Administrator, for review and a final decision.

c. When the Hearing/Review Officer is a member of the National Office staff, after the decision is written, but prior to notification of the applicant, in all cases requiring corrective actions or training (e.g., reversals or other problems which may become evident) the Hearing/Review Officer will brief the Deputy Administrator, Program Operations, concerning the decision and will notify the State Director involved that the decision will be reversed or modified, and will advise the State Director of what corrective action will have to be taken.

4. For decisions not directly covered above, the Hearing/Review Officer is the person in the next higher level of FmHA authority.

5. When a hearing involves both the action on Form FmHA 1924–25 and any other loan acceleration, the appeal process will follow that for the decision maker to foreclose the non-farmer program loan account.

## PART 1902—SUPERVISED BANK ACCOUNTS

11. The authority citation for Part 1902 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93–357, 88 Stat. 392; Title II of the Emergency Agricultural Credit Adjustment Act of 1978, 92 Stat. 429; deleg. of auth. by Sec. of Agr., 7 CFR 2.23; deleg. of auth. by the Under Sec. for Small Community and Rural Development, 7 CFR 2.70.

### Subpart A—Loan and Grant Disbursement

12. Section 1902.1 is amended by revising paragraphs (i), (j) and (k) to read as follows:

**§ 1902.1 General.**

* * * * *

(i) Supervised bank accounts referred to in this subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between either (A) the borrower, the United States of America acting through the FmHA, and the Financial Institution on Form FmHA 402–1, "Deposit Agreement," or (B) the borrower, FmHA, other lenders, and the Financial Institution on Form FmHA 402–5, "Deposit Agreement (Non–FmHA Funds)."

(j) Form FmHA 402–1 provides for the deposit of funds in a supervised bank account to assure the performance of the borrower's obligation to FmHA in connection with a loan and grant. This form will also be used in the situations described in § 1955.15(d)(3) of Subpart A of Part 1955 of this chapter.

(k) Form FmHA 402–5 will be completed when funds advanced by other lenders are deposited in a supervised bank account to assure the performance of the borrower's obligation.

* * * * *

13. Section 1902.2 is amended by revising paragraphs (a)(2), (a)(5), (b) and the introductory paragraph of (f) to read as follows:

**§ 1902.2 Policies concerning disbursement of funds.**

(a) * * *

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will continue to be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, subcontractors, etc., as necessary. When the construction process requires several checks to be issued at one time the LDS system can still be utilized. Those District and County Offices authorized to request checks by telephone may request more than one check at a time. If more than one check is required, a Form FmHA 440–57 or Form FmHA 1944–57 will be prepared for each check.

* * * * *

(5) Income from the sale of security or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402–1 when the District Director or County Supervisor determines it is necessary to do so to assure that the funds will be available for replacement of the property.

* * * * *

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 1940–1 or Form FmHA 440–57 to the State Office. Subsequent checks will be ordered as needed by submitting Form FmHA 440–57 or Form FmHA 1944–57 to the State Office. All

obligations, check request and loan closing data for MFH loans must be accomplished through field office terminals. Requesting checks using Form FmHA 1944–57 is authorized only when the system is expected to be down for an extended period.

* * * * *

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and the other lender) that are not used immediately after the loan and grant closing will be deposited in a supervised bank account under Form FmHA 402–5, provided:

* * * * *

14. Section 1902.3 is amended by revising paragraphs (a) and (c)(1) to read as follows:

**§ 1902.3 Procedures to follow in fund disbursement.**

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to the State Office by complying with the FMI for Forms FmHA 1940–1, FmHA 1944–51, FmHA 440–57 and FmHA 1944–57.

* * * * *

(c) * * *

(1) "For Deposit Only to Account No. (Number of Construction Account) of (Name of Borrower) in (Name of Financial Institution)."

* * * * *

15. Section 1902.14 is revised to read as follows:

**§ 1902.14 Reconciliation of accounts.**

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If the checking account statement does not include sufficient information to reconcile the account (the name of the payee or the check number and the amount of each check), the original cancelled check or either a microfilm copy or other reasonable facsimile of the cancelled check must be provided to the District or County Office with the statement. Checking account statements will be reconciled promptly with District or County Office records. The person making the reconciliation will initial the record and indicate the date of the action.

(b) All checking account statements and, if necessary, original cancelled checks or either a microfilm copy or other reasonable facsimile of the cancelled checks will be forwarded immediately to the borrower when bank statements and District or County Office records are in agreement. If a transmittal is used, Form FmHA 140–4, "Transmittal of Documents," is prescribed for that purpose.

(c) If the Financial Institution did not return the original cancelled check(s) to the Agency with the statements, and FmHA has a need for the original cancelled check(s), the Financial Institution, upon request by the Agency, will furnish to the Agency the requested original cancelled check(s) or a certified microfilmed copy or other reasonable certified facsimile of the cancelled check(s) in lieu of the original cancelled check(s). The Financial Institution will provide this service to the Farmers Home Administration with no fees being assessed the Agency or the depositor's account for the service.

16. Exhibit B to Subpart A of Part 1902 is revised to read as follows:

**Exhibit B of Subpart A—United States Department of Agriculture, Farmers Home Administration—Interest-Bearing Deposit Agreement**

Because, Certain funds of _____ referred to as the "Depositor," are now on deposit with _____, referred to as the "Financial Institution," under a Deposit Agreement, dated _____, 19____, providing for supervision by the United States of America, acting through the Farmers Home Administration, referred to as the "Government," which Deposit Agreement grants to the Government security and/or other interest in the funds covered by that Deposit Agreement, and

Because, certain of these funds are not now required for immediate disbursement and it is the desire of the Depositor to place these funds in interest-bearing deposits with the Financial Institution:

Therefore, the Depositor and the Government authorize and direct the Financial Institution to place _____ Dollars ($_____) of the funds subject to that Deposit Agreement in interest-bearing deposits as follows:

$_____ for a period of _____ months at _____% interest

$_____ for a period of _____ months at _____% interest

$_____ for a period of _____ months at _____% interest

These interest-bearing deposits and the income earned on them at all times shall be considered a part of the account covered by said Deposit Agreement except that the right of the Depositor and the Government to jointly withdraw all or a portion of the funds in the account covered by the Deposit Agreement by an order of the Depositor countersigned by a representative of the Government, and the right of the Government to make written demand for the balance or any portion of the balance, is modified by the above time deposit maturity schedule. The evidence of such time deposits shall be issued in the names of the Depositor and the Farmers Home Administration.

A copy of this Agreement shall be attached to and become a part of each certificate, passbook, or other evidence of deposit that may be issued to represent such interest-bearing deposits.

Executed this _____ day of _____.

UNITED STATES OF AMERICA

_____

(Depositor)

By: _____

By: _____

Title: _____

County Supervisor
Farmers Home Administration
U.S. Department of Agriculture

Accepted on the above terms and conditions this _____ day of _____, 19____.

_____

(Financial Institution)

_____

(Office or Branch)

By: _____

Title: _____

**Exhibits C and D to Subpart A—[Removed]**

17. Exhibits C and D to Subpart A of Part 1902 are removed.

**PART 1910—GENERAL**

18. The authority citation for Part 1910 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10 Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

**Subpart A—Receiving and Processing Applications**

19. Section 1910.1 is amended by revising the introductory text to read as follows:

**§ 1910.1 General.**

This subpart prescribes the policies and procedures for receiving and processing Insured section 502 and 504 Rural Housing (RH), Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Labor Housing (LH) loan and grant applications except as modified by program regulations. It also prescribes policies for informing applicants and other interested individuals about the services of the Farmers Home Administration (FmHA).

* * * * *

20. Section 1910.3 is amended by revising paragraphs (b)(2), (c) and (e), redesignating paragraphs (b)(3) as (b)(4) and adding a new paragraph (b)(3) to read as follows:

* * * * *

**§ 1910.3 Receiving applications.**

* * * * *

(b) * * *

(2) RH applicants who have a current Form FmHA 431–3, "Household Financial Statement and Budget," or Form FmHA 410–4, and who are presently indebted to FmHA, will be required to complete only the following items of Form FmHA 410–4:

(i) Name.
(ii) Social Security Number.
(iii) Loan purpose.
(iv) Planned income for next 12 months.
(v) Date and signature of the application.

If other information about their current status is not available for adequate processing of their applications, these applicants should fully complete Form FmHA 410–4.

(3) Farmer program applicants who are presently indebted to FmHA will be required to complete Form FmHA 410–1.

* * * * *

(c) County Office Assistants ordinarily will be responsible for receiving loan applications and giving a preliminary explanation of services available through FmHA. An explanation of the types of assistance available should be given whenever it is not clear what type of loan or grant will meet the applicant's needs. The employee receiving the application will make sure that it is properly completed, dated, and signed, and will give whatever assistance necessary. An applicant may apply for and maintain a loan account using a birth-given first name and a birth-given surname, or the spouse's surname, or a combination surname. Married persons may apply as individuals. In the case of a joint application, the persons requesting the assistance will designate who is listed as "applicant" and who is listed as "co-applicant." For all farmer program applications filed on Form FmHA 410–1, should the husband sign as an applicant and the wife sign as a co-applicant, they will be considered to be a joint operation type entity as set out in FmHA loan making regulations. The County Office Assistant or the County Supervisor should explain to husbands and wives that they may apply for farmer program loans as individuals and that the joint operation will be considered the borrower if they apply together. When the use of veteran's preference is involved, the identity of the veteran must be properly documented if the name used in the application differs from that shown on the veteran's evidence of eligibility.

* * * * *

(e) Signature requirements on the Promissory Note will be as needed to assure repayment of the indebtedness and as set out in the loan making regulations. The spouse of an applicant will not be required to sign the note unless the spouse's signature on the note is required to create an interest in security. If a cosigner will be required, the applicant will be allowed to choose one; FmHA cannot require the applicant's spouse to be the cosigner. Signature requirements on the Mortgage or Deed of Trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default. FmHA State supplements will be issued to outline the requirements in accordance with State real property law. The State Director will obtain the advice of OGC prior to issuance of the State supplement.

* * * * *

21. Section 1910.4 is revised to read as follows:

**§ 1910.4 Processing applications.**

When obtaining information concerning applicants and evaluating their qualifications, FmHA personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA. In the processing of applications for Farm Ownership, Farm Operating and Soil and Water loans received from family size operators, the County Supervisor may recommend the applicant for the additional services of the "New Full-time Family Farmer and Rancher Development Committee." See Exhibit A of Subpart B of Part 1924 of this chapter for the policies governing those additional services. If a farm is situated in more than one State, County or parish, the loan will be processed in the State, County, or parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office.

(a) *Completed RH applications.* Completed applications are those for which all information necessary to determine eligibility has been received, and they will be processed in the order received, except an application from a veteran will receive preference as outlined in § 1910.10 of this subpart. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Information may be obtained and verified by:

(1) County Office records.
(2) Form FmHA 410–4.
(3) Credit reports as provided in Subparts B and C of Part 1910 of this chapter (Subpart C available in any FmHA office).
(4) Personal contacts.
(5) Visits of supervisory personnel to the applicant's residence or business.
(6) Form FmHA 410–8, "Applicant Reference Letter," to inform sources such as creditors, bankers, merchants, employers, and landlords. The information obtained as a result of personal inquiries and observations will be recorded in the running record. The information obtained by correspondence will be attached to the Form FmHA 410–4.

(i) Form FmHA 410–8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual, a joint operation, or a partnership of 5 or fewer members. When not using Form FmHA 410–8, the notification will read as follows:

> I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, "The Right to Financial Privacy Act of 1978," Pub. L. 95–630 in seeking Financial information regarding_____ (Applicant).
>
> _____
> Date.
>
> _____
> County Supervisor.

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Department's Office of Advocacy and Enterprise (OAE)) without express approval of the Office of General Counsel (OGC).

(7) Form FmHA 1910–5, "Request for Verification of Employment." This form may be used to verify employment and income.

(8) Form FmHA 1940–20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this chapter.

(9) Information required by § 1910.3 (a) (3) and (4).

(b) *Farmer program applications.* Farmer program loan applications

consist of a preliminary application and/or completed application. Both types of applications include persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming.

(1) *Preliminary application.* All farmer program applicants must file a preliminary application, except those who are not actively involved in farming. A preliminary application will be used to determine a preliminary loan risk index in accordance with Exhibit A to this subpart. The preliminary application may be rejected if the loan risk index is too high and the applicant will be advised of this in accordance with § 1910.6(b)(1) of this subpart. If the loan risk index is too low the applicant will be advised that commercial credit should be available to finance the applicant's credit needs. The County Supervisor will send the applicant Attachment 1 to Exhibit A of this subpart. If the loan risk index is acceptable the County Supervisor will send the applicant Exhibit B of this supbart. The preliminary application will consist of:

(i) Completed Form FmHA 410–1, "Application for FmHA Services."

(ii) If the applicant is a cooperative, corporation, partnership, or joint operation:

(A) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(B) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(C) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(D) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(iii) Pre-application farmer program loan risk evaluation worksheet as set out in Exhibit A of this subpart.

(iv) The requirement set forth in § 1910.3 (a)(3)(i) of this subpart.

(2) *Completed applications.* Completed applications are those for which all information necessary to determine eligibility has been received, and they will be processed in the order received, except as outlined in § 1910.10 of this subpart. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. A completed farmer program application will consist of:

(i) The previously submitted information required in paragraphs (b)(1) (i), (ii), and (iii) of this section.

(ii) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(iii) Credit reports as provided in Subparts B and C of Part 1910 of this chapter.

(iv) Form FmHA 410–8 as set out in § 1910.4(a)(6) of this subpart.

(v) A brief narrative as to the farm training and/or experience of the applicant and the individual members of an entity applicant.

(vi) Supporting evidence that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(vii) Any readily obtainable financial information for the past three years.

(viii) Up to five years of production history.

(ix) Form FmHA 424–1, "Development Plan," if necessary.

(x) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(xi) Applicable items required in Exhibit M of Subpart G of Part 1940 of this chapter.

(xii) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(xiii) Form FmHA 440–32, "Request for Statement of Debts and Collateral," when applicable.

(xiv) Form FmHA 1940–22, "Environmental Checklist for Categorial Exclusion," or Class I or Class II assessment, whichever is applicable.

(xv) Form FmHA 1945–22, "Certification of Disaster Losses," (EM only).

(xvi) Form FmHA 1945–29, "ASCS Verification of Farm Acreage Production and Benefits," (EM only).

(xvii) The requirement set forth in § 1910.3 (a)(4) of this subpart.

(xviii) The County Supervisor will calculate the farmer program loan risk index as set out in Exhibit D of this subpart. The completed application will be rejected by the County Supervisor if the farmer program loan risk is too high in accordance with Exhibit D of this subpart. The applicant will be advised of this in accordance with § 1910.6(b)(1) of this subpart.

(xix) Additional information may be obtained and verified by:

(A) County Office records.

(B) Personal contacts.

(C) Visits of supervisory personnel to the applicant's operation.

(c) *Incomplete farmer program applications.* Applicants who do not submit necessary information for preliminary or complete applications for EM, FO, OL and SW loans will be sent a letter within 20 working days after receipt of their applications. The letter will state clearly the additional information needed, and that the application cannot be processed until all required information is received in the FmHA County Office.

(d) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after a preliminary or complete application for OL, FO, SW or EM assistance is received, and prior to County Committee action, the County Supervisor will send a letter similar to FmHA Guide Letter No. 1924–B–1 to the applicant telling the applicant about Limited Resource loans.

(e) *Determining eligibility.* The County Committee will be used to determine eligibility of completed RH applicants who are also applying for a farmer program loan, or who are already indebted for a farmer program loan. The County Supervisor will determine eligibility for all other RH applicants. All completed farmer program applications are to be submitted to the County Committee for a determination of eligibility. The County Committee will certify whether or not the applicant meets the eligibility requirements by use of Form FmHA 440–2, "County Committee Certification or Recommendation." The County Committee will not determine the applicant's projected repayment ability, or the adequacy of collateral equity to secure the requested loan(s), or the

feasibility of the proposed operation. These decisions are reserved for the loan approval official.

(f) *County Committee actions.* All actions by the Committee regarding applicant eligibility will be taken in Committee meetings attended by at least two Committee members. If the County Committee is unable to reach a decision based on the information available, they may request the County Supervisor to obtain further information or may request a personal interview with the applicant. The County Committee will act on the application after considering all pertinent information. This action will be taken in the absence of the applicant. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations.

(g) *Timeliness.* Written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a *completed* application; and for farmer program loan applications, each application must be approved or disapproved and the applicant notified, in writing, of the action taken, not later than 60 days after receipt of a completed application. If an application is disapproved, the applicant will be given appeal rights for any decision that is appealable under Subpart B of Part 1900 of this chapter. If a determination of eligibility cannot be made within 30 days from the date of receipt of the completed application, the applicant will be notified, in writing, of the circumstances causing the delay, and the approximate time needed to make a decision. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

(h) *Recording action taken.* The County Committee minutes or the running case record (whichever is appropriate) will show what action was taken on each application. The specific reason(s) for unfavorable decisions of eligibility on applications will be shown on the Committee Certifications. In those cases not involving County Committee action, this information will be recorded in the running case record.

(i) *Active applications.* An applicant may voluntarily withdraw an application at any time. When an applicant has been determined eligible, but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a notice within 30 days that further consideration is desired. The letter will contain the ECOA paragraph set forth in § 1910.6 (b)(1) of this subpart. Applications for RH, RRH, RCH, RHS, and LH loans received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed. Applications received for FO, SW, OL and persons applying for RH loans on farms or non farm tracts who derive a major portion of their income from farming, will remain active during the remainder of that fiscsl year in which they were received, unless withdrawn or disapproved, or unless the loan is closed. EM applications will remain active for 12 months from the date they were received. All applications which are approved but not funded, withdrawn, or rejected will be retained in an inactive file for 25 months after the end of the fiscal year if approved but not funded, or the date of withdrawal or notice of adverse action. If notice has been received by FmHA that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter.

22. Section 1910.6 is amended by revising paragraphs (a) and (d), by redesignating paragraphs (e) and (f) as (f) and (g) respectively and by adding a new paragraph (e) to read as follows:

**§ 1910.6 Notification of applicant.**

* * * * *

(a) *Favorable decision.* If the decision of eligibility is favorable, the County Supervisor will notify the applicant immediately, and then will proceed promptly to process the loan in accordance with the applicable regulations. Care should be exercised to be sure that the applicant understands that a decision of eligibility does not constitute approval of the loan. In notifying the applicant of a favorable decision on eligibility, the County Supervisor will, when necessary, schedule a meeting with the applicant to proceed with developing the loan docket. If the County Supervisor or the loan approval official disagrees with the County Committee's decision, the County Supervisor or loan approval official will send the case to the State Director for review. The County Supervisor or loan approval official will include in the file the reasons for the disagreement with the decision. If after a review of the case the State Director overturns the County Committee's decision the applicant will be notified of the unfavorable decision, along with the ECOA Notice and given the opportunity to appeal; the State Director will be considered the decision maker. The County Committee will be informed of the action and the reasons for overturning their decision. When the applicant has been determined eligible for assistance and additional information becomes available that indicates the original determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. If, after reconsideration, the applicant is rejected, adverse action has occurred, and proper notification will be sent.

* * * * *

(d) *Lack of funds for FO, SW, and OL.*

(1) When all of the FO, SW, and OL funds allocated to a state during a fiscal year have been obligated, applications for that loan program will no longer be accepted. It is the responsibility of the State Director to notify all county offices when this occurs. Applicants may be given and may complete applications, farm and home plans and other FmHA forms, but no applications will be accepted. OL applicants will be told that funds will not be available and applications will not be accepted until the next October 1 or until pooled funds are available or until reserve funds are allocated to the state by the National Office. OL applicants will also be told the approximate date the state will know whether it will receive pooled funds or a reserve fund allocation and will be told to check with the county office on that date to see whether pooled funds are available or whether a reserve allocation has been made and is available. FO and SW applicants will be told that funds will not be available and applications will not be accepted until the next October 1 or until pooled funds are available. Applications which are pending on the date all allocated funds are obligated will continue to be processed.

(2) Allocations from OL, FO, and SW pooled and reserve funds will be made from among the approved applications pending on the date all allocated funds are obligated; then from among applications pending, processed and approved after that date. If pooled or reserve funds are available after these applications have been funded, the State Office will notify County Offices that pooled/reserve funds are available and new applications will be accepted and approved until those funds are allocated.

(3) If no funds are available within 15 days of loan approval, eligible applicants will be approved for the loan, and Form FmHA 1940–1, "Request for Obligations of Funds," will be executed

by the appropriate loan approval official. The following approval condition will be included under section 41, "Comments and Requirements of Certifying Official," of Form FmHA 1940–1, upon execution of the form for all insured and guaranteed farmer program loans:

This loan is approved subject to the availability of funds. If this loan/guarantee does not close for any reason within 90 days from the date of approval on this document, the approval official will request updated eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds and will have as much additional time as is needed to redetermine eligibility or to have the County Committee determine eligibility.

Insured loans will also include the following statement:

If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15 working day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

Exhibit C of this subpart will be mailed to all insured loan applicants whose requests for assistance have been approved but whose loans cannot be funded. If no funds become available before the end of the fiscal year, the applicant will be notified in writing that the loan cannot be funded and that a new application will have to be filed if the applicant wants to be considered for a loan. If funds become available before the end of the fiscal year, the applicant will be notified of this. The loan approval official will ask the applicant for updated eligibility information if more than 90 days has passed since Form FmHA 1940–1 was signed. If there have been any significant changes that would affect eligibility, the County Supervisor will obtain necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration. If, after reconsideration, the application is rejected, adverse action has occurred, and proper notification will be sent as outlined in § 1910.6(b)(1) of this subpart.

(e) *Lack of funds for RH, RRH, RCH, RHS and LH.* Applications received when funds are not available will be processed and a decision on eligibility will be made. Applicants who are ineligible will be so advised, in accordance with § 1910.6 (b)(1) of this subpart. If no funds are available within 15 days of loan approval, eligible applicants will be notified by the county office that their applications will be held until funds are available. When funds become available for the requested loan, eligible applicants will be notified by the county office immediately by letter. Funds must be provided to the applicant within 15 days of when they become available unless the applicant agrees to a longer period. The letter should tell the applicant to notify the County Office immediately if the applicant is still interested in obtaining the assistance originally applied for. If the applicant does not respond within 10 days of the date of the first letter, a second notice will be sent requesting the applicant to contact the County Office within 15 days or the application will be considered withdrawn. The letter will contain the ECOA Notice set forth in § 1910.6 (b)(1) of this subpart. If the applicant indicates a desire to obtain assistance, the County Supervisor will obtain necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration. If, after reconsideration, the application is rejected, adverse action has occurred, and proper notification will be sent as outlined in § 1910.6 (b)(1) of this subpart.

* * * * *

23. Section 1910.10 is revised to read as follows:

**§ 1910.10 Preference.**

(a) *Veterans.* Veteran's preference will be extended to any person applying for an RH, FO, SW, or OL loan who has been honorably discharged, including clemency discharges, or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, who served on active duty in such forces:

(1) During the period of April 6, 1917, through March 31, 1921;

(2) During the period of December 7, 1941, through December 31, 1946;

(3) During the period of June 27, 1950, through January 31, 1955, or (4) for a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(b) *Applying Veteran's preference.* Veteran's preference will apply for RH, FO, SW, and OL applicants when:

(1) There is a shortage of funds.

(2) Obligation forms are ready to be submitted to the Finance Office, and

(3) There is more than one application having the same date.

(c) *RH loans.* Veteran's preference will also be extended to the spouses and children of deceased servicemen who died in service during one of the periods described in paragraph (a) of this section.

(d) *Farmer program loans.* (1) In addition to the veteran's preference, the preference set out in § 1943.10 of Subpart A of Part 1943 of this chapter applies.

(2) In addition to the veteran's preference and the preference set out in § 1943.10 of Subpart A of Part 1943 of this chapter, an application from a presently indebted farmer program borrower will be given preference over one from an applicant who is not a presently indebted farmer program borrower if:

(i) There is a shortage of funds,

(ii) Obligation forms are ready to be submitted to the Finance Office, and

(iii) There is more than one application having the same date.

24. Exhibit A with Attachment 1 to Subpart A of Part 1910 is added to read as follows:

**Exhibit A to Subpart A—Farmer Program Pre-application Loan Risk Evaluation**

I. *Objective.* The objective of this loan making assessment is to evaluate the applicant's financial position based upon the financial data furnished on Form FmHA 410–1, "Application for FmHA Services," using three ratios. The Administrator will have the authority to change the range on the ratios or the type of ratios used in this evaluation. Any change will be based on the prevailing economic trends. This action will be published in the **Federal Register.**

II. *Definitions of the Ratios.*

(A) *Total liabilities/total assets*—A ratio which assesses the capital structure of an operation and shows the extent to which the debt capital is being utilized. The smaller the ratio, the less debt relative to total assets an applicant has, which would tend to result in less loan risk.

(B) *Net cash farm income (before interest payments)—family living expenses/total assets*—A ratio which indicates the rate of return which the applicant is receiving on the investment in the farm operation. A higher rate of return is an indication of less loan risk.

(C) *Current assets/current liabilities*—A ratio which measures whether or not a borrower could generate enough cash from the sale of current assets (assets which would normally be sold in 12 months or less) to pay current liabilities (debt payments normally due in a 12-month period). The ability of an operation to make payments in a timely fashion, without disrupting the sound operation, is important to financial liquidity. As this ratio increases, loan risk decreases.

III. *Calculation Method to be Used.* The data used to calculate the ratios will be obtained from Sections 18, 19, and 21 of Form FmHA 410–1. These sections should contain complete and accurate information for the applicant's operation from the previous crop year. The specific method for calculating each ratio is described below. *The*

*calculation will be documented in the running record.*

(A) *Total liabilities/total assets*=Total liabilities from the balance sheet divided by total assets from the balance sheet. The values used in the calculation of this ratio should be the current market value and not the cost basis. For corporations, cooperatives, partnerships or joint operations the total liabilities and total assets will be equal to the total liabilities and assets from the entities balance sheet plus the total liabilities and assets from the balance sheets obtained from the entity members.

(B) *Return on assets*=Net cash farm income (before interest payments) minus family living expenses divided by total assets. Net cash farm income is calculated by taking gross cash farm income minus all cash farm operating expenses (excluding interest). Total assets should be the market value of all assets on the balance sheet.

(C) *Current ratio*=Total current assets (which would normally be sold in the next 12 months or less) divided by the total current liabilities (which would normally be due in 12 months or less) on the balance sheet. The values used to calculate this ratio should be the current market value and not the cost basis.

Once the ratios are calculated as described above, the box above the range in which the calculated ratio falls will be checked on the worksheet in paragraph IV of this exhibit. These ranges are assigned a value of 1–4 with 1 being the least risk and 4 being the highest risk. The points associated with each box (1–4) will be totalled and this will determine the loan risk index. *A loan risk index of 9 or more is determined to be an extremely high risk index and not acceptable.* Such pre-applicants lack a reasonable chance to be successful and have a high probability of loss and loan failure. The County Supervisor will immediately notify the pre-applicant, in writing, of the reasons for this unfavorable decision as set out in § 1910.6(b)(1) of this subpart. Should the pre-application risk evaluation index be between 5–8, the County Supervisor will notify the applicant in writing of a favorable risk index and of the necessary items needed for a completed application as set out in § 1910.4(b)(2) of this subpart. Exhibit B of this subpart will be sent to the applicant. Should the pre-application risk index be 4 or less, the applicant will be advised in writing that private or conventional credit, either with or without an FmHA guarantee, should be available to meet the applicant's credit needs. Attachment 1 of this exhibit will be used to notify the applicant of this decision. Attachment 1 of this exhibit contains further instructions for processing these low risk pre-applicants.

IV. *Farmer Program Pre-application Loan Risk Evaluation Worksheet.*

Least risk.....Highest risk

1☐ 2☐ 3☐ 4☐

A. Total liabilities/total assets:

40% or less☐

40%–69%☐

70%–99%☐

100% or more☐

B. Return on assets:

10% or more☐

09%–05%☐

04%–01%☐

01% or less☐

C. Current ratio: 1.50 or more, 1.49–1.25, 1.24–1.01, 1.00 or less.

*Points*

Ratio 1

Ratio 2

Ratio 3

Total=risk index

*Risk Index*

9 or more=Extremely high risk

7–8=High risk

5–6=Medium risk

4 or less=Low risk

***Note.—This worksheet will be duplicated, completed and placed in pre-applicant's file.**

Exhibit A to Subpart A, Attachment 1

*Letter for Notifying Pre-Applicants That Other Credit May Be Available*

United States Department of Agriculture

Farmers Home Administration

(Insert Address)

(Date)

Dear _____:

Based upon our review of the financial information contained in your Farmers Home Administration (FmHA) pre-application loan package, we have determined that your present financial situation is sound and the extension of credit to you would involve low risk.

We believe that due to the low risk involved, conventional credit, either with or without an FmHA guarantee, should be available to finance your credit needs.

You must provide this office with written evidence from 2 lenders that you are unable to obtain conventional credit without an FmHA guarantee. If you are unable to obtain this credit, you must then provide written evidence that you are unable to obtain conventional credit with an FmHA guarantee from at least 2 lenders. This written evidence of your inability to obtain credit elsewhere must be provided to this office within 15 calendar days of the date of this letter or your preliminary application will be withdrawn. If you are unable to obtain this credit, you will then be advised of the items necessary for you to submit a completed application.

*(The following paragraph for individual applicants only):*

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

(County Supervisor)

_____

(Title)

25. Exhibit B to Subpart A of Part 1910 is added to read as follows:

**Exhibit B to Subpart A—Letter for Information Needed for a Complete Farmer Program Application**

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

(Date)

Dear _____:

Your pre-application for an FmHA loan has been reviewed and evidence indicates that you are unable to obtain conventional credit with or without an FmHA guarantee. Please submit the following information to this office so that your loan request can be further considered:

(1) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(2) Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification."

(3) A copy of any lease, contract, agreement or option entered into by the applicant/entity which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(4) Form FmHA 440–32, "Request for Statement of Debts and Collateral." If you presently owe loans or have unpaid operating accounts or bills with other creditors, it is essential that we verify the unpaid balances of these debts. Please complete Form FmHA 440–32 for each of your present creditors. These forms are to be completed as follows: (Additional forms are available from our office.)

A. Enter the creditor's name and address in the top left portion of the form.

B. Enter your name and address on the line following "I," sign and date the form (bottom right).

C. Deliver the form(s) to each of your creditors and insure that they return the completed form to our office.

(5) A legal description your owned farm, real estate property and/or a copy of your lease, including the legal descriptions of all rented crop land, whichever is applicable.

(6) Narrative of farm training and/or experience of the applicant and all members of an entity applicant.

(7) Form FmHA 1945–22, "Certification of Disaster Losses," (for emergency loan application only).

(8) Form FmHA 1945–29, "ASCS Verification of Farm Acreages Production and Benefits," (for emergency loan application only).

(9) Written evidence from your present lender (if you are presently farming) or other local lenders documenting your inability to obtain other credit, including a guaranteed

loan. Copies of the lender's letter must be provided to our office.

(10) Three (3) Year Summary of Financial History (if you are presently or were recently farming). This information may be summarized from your records and entered on the enclosed sheet, or you can provide a photocopy of financial records which you maintain that will provide the requested information.

(11) Five (5) Year Summary of Production History (summarizing income, expenses and debt repayment record, if you are presently or were recently farming). This information may be summarized from your records and entered on the enclosed sheet, or you can provide a photocopy of production performance records which you maintain that will provide the requested information.

(12) Applicant's Reference Letter List—this list must show complete address and credit account number if reference is a credit institution.

FmHA will mail Form FmHA 410–8 letters to the references provided and they must be received back in the office before your application is considered complete.

or

A credit report fee of $_____ payable to the Farmers Home Administration. Upon receipt of your fee, a commercial credit report will be ordered and this report must be received by the FmHA County Office before your application is considered complete.

(13) Form FmHA 1910–5, "Request for Verification of Employment." This will be used only if you are relying on off-farm employment to pay part of your expenses.

(14) Form FmHA 424–1, "Development Plan."

The following FmHA forms are attached for your use in filing a complete application:

_____ Form FmHA 410–9, "Statement Required by the Privacy Act."

_____ Three-Year Summary of Financial History.

_____ Five-Year Summary of Production History.

_____ Applicant Reference Letter List.

_____ Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."

*_____ Form(s) FmHA 1910–5, "Request for Verification of Employment."

*_____ Form FmHA 431–2, "Farm and Home Plan."

*_____ Form FmHA 1945–22, "Certification of Disaster Losses."

*_____ Form FmHA 1945–29, "ASCS Verification of Farm Acreage Production and Benefits."

*_____ Form FmHA 424–1, "Development Plan."

---

County Supervisor.

26. Exhibit C of Subpart A of Part 1910 is added to read as follows:

**Exhibit C to Subpart A—United States Department of Agriculture**

Farmers Home Administration
(location)

Dear:_____

Your application for Farmers Home Administration (FmHA) services has been approved; however, the Agency has currently exhausted its appropriation of funds for the type(s) of loans you are requesting. Your loan application will remain on hand for the remainder of this fiscal year (until September 30, 19____), unless you wish to withdraw it. When funds become available for your request you will be notified. If there have been any changes in your application since it was originally filed, your eligibility will be reestablished at that time. This may require your submission of updated financial information. Should your loan request not be funded this fiscal year, you will be advised accordingly and you may reapply after September 30, 19____.

If you have any questions regarding the status of your application, please contact this office.

---

County Supervisor.

27. Exhibit D of Subpart A of Part 1910 is added to read as follows:

**Exhibit D to Subpart A—Farmer Program Loan Risk Index**

I. Objective. The objective of this loan making assessment is to determine the loan risk index for each application based upon the applicant's financial position using three ratios. The Administrator will have the authority to change the range on the ratios or the type of ratios used in this risk evaluation. Any change in the range and ratios used, will be based on prevailing economic trends. This action will be accomplished by publication of a notice in the **Federal Register.**

II. *Definitions of the Ratios.*

A. *Total liabilities/total assets*=A ratio which assesses the capital structure of an operation and shows the extent to which debt capital is being utilized. The smaller the ratio, the less debt relative to total assets an applicant has, and this would indicate lower risk.

B. *Net cash farm income (before interest payments)—family living expenses/total assets*=A ratio which indicates the rate of return which the applicant is receiving on the investment in the farming operation. As the rate of return increases, the more profitable an operation is and this would cause it to have a lower risk.

C. *Balance available/total debt payments*=A ratio which indicates whether or not a farmer will be able to meet all of his debt payment obligations. If this ratio is ever less than 1, the loan should be rejected. As the cash flow margin increases, the risk index would be lower.

III. *Calculation method to be used.* The data used to calculate the ratios will be obtained from the applicant's most recent balance sheet and the proposed farm plan for the current year. The method for calculating each ratio is described below. *The calculation will be documented in the running record and in accordance with the following:*

A. *Total liabilities/total assets*=Total liabilities from the balance sheet divided by total assets from the balance sheet. The values used in the calculation of this ratio should be the current market value and not the cost basis. For corporations, cooperatives, partnerships or joint operations the total liabilities and total assets will be equal to the total liabilities and assets from the entities balance sheet plus the total liabilities and assets from the balance sheets obtained from the entity members.

B. *Return on assets*=Net cash farm income (before interest payments) minus family living expenses divided by total assets. Net cash farm income is calculated by taking gross cash farm income minus all cash farm operating expenses (excluding interest). Total assets should be the market value of all assets on the balance sheet.

C. *Balance available/total debt payments*=Balance available is gross cash farm income minus (all cash farm operating expenses + family living expenses + capital purchases) plus (non-farm income + cash carry-over + interest) plus (loans and other operating credit). This balance available would then be divided by total debt payments which includes all principal and interest payments due (including delinquencies), all open accounts which are due, and income and social security taxes due.

Once the ratios are calculated as described above, the box above the range in which the calculated ratio fell will be checked on the worksheet in paragraph IV of this exhibit. These ranges are assigned a value of 1–4, with 1 being the lowest risk and 4 the highest risk. The points associated with each box (1–4) will be totalled and this will determine the loan risk index. *Applicants having a loan risk index of 9 or more will be disapproved by the appropriate FmHA loan approval official.* Applicants having an index of 9 or more, lack a reasonable prospect to be successful in their farming operation and have a high degree of potential loan failure or risk. The applicant will receive notice of this unfavorable decision as set out in § 1910.6(b) of this subpart.

IV. *Farmer Program Loan Risk Index Worksheet.*

1 ☐ 2☐ 3☐ 4☐

1. Total liabilities/total assets:
40% or less ☐
40%–69%☐
70%–99%☐
100% or more ☐

2. Return on assets:
10% or more ☐
09%–05%☐
04%–01%☐
01% or less☐

3. Repayment ability margin (cash flow for planned year): 115% or more 114%–110% 109%–105% 104% or less

*Points*

*Ratio 1*
*Ratio 2*
*Ratio 3*
Total=Loan risk index

**Note.**—This worksheet will be duplicated, completed and placed in the applicant's file.

---

*County Supervisor will strike these if not required. All other items are always required.

## PART 1924—CONSTRUCTION AND REPAIR

28. The authority citation for Part 1924 continues to read as follows:

**Authority:** 7 U.S.C. 1989; U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Planning and Performing Construction and Other Development

29. Section 1924.1 is revised to read as follows:

**§ 1924.1 Purpose.**

This subpart prescribes the basic Farmers Home Administration (FmHA) policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), single unit Labor Housing (LH), and Emergency (EM) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multiunit (LH) loans and grants, and Rural Housing Site (RHS) loans.

### Subpart B—Management Advice to Individuals, Borrowers and Applicants

30. Section 1924.57 is amended by revising paragraphs (b)(2), (c)(5), (c)(6), and (d) to read as follows:

**§ 1924.57 Planning.**

* * * * *

(b) * * *

(2) If the County Supervisor and the borrower cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431–2 and 1962–1 when a new or subsequent loan is involved, the loan will not be made and any appeal will be handled in accordance with Subpart B of Part 1900 of this chapter. When a new or subsequent loan is not involved, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA *must* make releases for essential family living and farm operating expenses. In addition, FmHA must make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and the borrower will sign a Farm and Home Plan, when applicable, and a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the Farm and Home Plan, when applicable, and Form FmHA 1962–1 and will explain that those documents are considered binding by FmHA. Borrowers who do not abide by those documents will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

* * * * *

(c) * * *

(5) Determine the feasibility of the Farm and Home Plans. A feasible plan is necessary if a loan is being made or a servicing action is being taken. A feasible plan is not necessary if the only reason for developing the plan is to complete a Form FmHA 1962–1 in accordance with paragraph (b)(1)(iv) of this section. Feasible plans must insure a positive cash flow. A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflow for the planned period. A positive cash flow must show that a borrower will at least be able to:

(i) Pay all operating expenses and taxes and have a reserve for any tax liability.

(ii) Meet scheduled payments on all debts including any required payments on open accounts and on carryover debts.

(iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses, such as providing for expenses for major repairs.

(iv) Have a reasonable standard of living for the individual borrower or the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower.

(v) Provide for any essential capital purchases or improvements. Usually it is necessary to plan for a capital expenditure reserve which reflects the depreciating value for the property that will have to be replaced.

(6) Will contact borrowers with loans secured by chattels approximately 60 days prior to the expiration date for Form FmHA 1962–1 and obtain a new completed form for the upcoming year prior to the expiration of the existing form. A list will be maintained in the Management Systems Box in the Miscellaneous division in accordance with § 1905.5(d) of Subpart A of Part 1905 of this chapter (available in any FmHA office). The list will include the borrower's name, the expiration date of the form, and the date for follow-up by the County Supervisor.

(d) *Documentation and revision of plans.* (1) Plan will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. For existing farmers, actual production and financial history for the past 5 years will be utilized. For operations less than 5 years old, the existing history will be used. Projections for existing farmers are not acceptable unless they are based upon the data which is consistent with actual history. For beginning farmers, the County Supervisor will use Agricultural Stabilization and Conservation Service (ASCS) records, ES data, County averages, State averages, or other reliable sources of data to develop the projections. Unit prices for all agricultural commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued not later than *January 1* of each year. State Directors may establish regional unit prices for different regions of a State when there is evidence of an established pattern for the regional price of a commodity. These commodity prices will be established by averaging the *monthly market prices of each commodity for the previous 12-month period.* The monthly average market prices will be provided by the USDA State Crop and Livestock Reporting Service, or similar State or Federal agency or body. If statewide figures are not available, the State Director will consult with other agricultural agency representatives and agricultural lenders in the local area before establishing commodity prices. State Directors and Farmer Program Chiefs in adjoining States will consult each other before releasing their established commodity price lists.

(2) Form FmHA 1962–1 will be revised whenever changes in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur. The Form FmHA 1962–1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the Form FmHA 1962–1. Also, if the changes would result in a major change

in the operation, a new farm plan must be developed. It may be necessary to meet with the borrower to develop a new plan. If the borrower and the County Supervisor cannot agree on a revision, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA *must* make releases for essential family living and farm operating expenses. In addition, FmHA must make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the form and will explain that it is considered binding by FmHA. Borrowers who do not abide by the form will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

* * * * *

31. Section 1924.59 is amended by revising paragraph (d) to read as follows:

**§ 1924.59 Supervision.**

* * * * *

(d) *Use of Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals, and Borrower Responsibilities."* Before or at loan closing, the County Supervisor will provide borrowers with this form. Borrowers who *voluntarily* decide to sell their chattels and real estate, to transfer their assets to someone else, to convey their assets to the Government, or to sign an accelerated repayment agreement will be sent this same form before the sale, transfer, conveyance or signing of an accelerated repayment agreement takes place. The form will also be sent to all farmer program loan borrowers in November of each year to remind them of the available servicing options. The form tells borrowers that they are expected to repay their loans as scheduled, but that FmHA has several servicing options available to assist borrowers if they are not able to pay as scheduled. It goes on to give brief descriptions of deferral, rescheduling, reamortization, consolidation, subordination, restructuring the business and debt by selling a portion of the borrower's assets, and limited resource loans. If borrowers want more information about these options and want to know how to apply, they are advised on the form to contact the County Supervisor. The County Supervisor will then send the borrower Exhibit A of Subpart A of Part 1951 of this chapter and the price list referred to in § 1924.57(d) of this subpart. The form also summarizes some of the borrower's responsibilities regarding loan payments, loan security, use of loan funds, releases of security, and changes in the operation and informs the borrower that a violation of any of these responsibilities not only could result in denial of further FmHA assistance but also could cause the loan(s) to be accelerated.

* * * * *

32. § 1924.72 is amended by revising the introductory text and by revising paragraphs (a), (b), (c), (d), and (e) to read as follows:

**§ 1924.72 Borrowers who receive Forms 1924–25 and 1924–26.**

Borrowers will receive Forms FmHA 1924–25 and 1924–26 along with Form FmHA 1924–14 before a farmer program loan is involuntarily liquidated (see § 1965.26(b) of Subpart A of Part 1965 of this chapter and §§ 1965.40 and 1962.49 of Subpart A of Part 1962 of this chapter) and when an account is more than $100 delinquent on December 31 (see § 1924.71 of this subpart). These forms will also be provided to borrowers who have made unauthorized dispositions of security, who have stopped farming, or who have otherwise breached their loan agreements with FmHA. These forms will be provided, for information only, when a farmer program loan borrower files bankruptcy (see § 1962.47 of Subpart A of Part 1962 of this chapter). If a cosigner(s) is involved, the original forms will be sent to the borrower and a copy will be addressed to the cosigner(s). Only the borrower will be considered for the servicing options described in Form FmHA 1924–14. Refer to the definition of borrower given in § 1962.4(c) of Subpart A of Part 1962 of this chapter. If a situation exists where an entity borrower has dissolved, and a transfer/assumption by the cosigners has not been processed, the cosigners will be considered the borrowers. Form FmHA 1924–25 tells borrowers that FmHA intends to liquidate their loans (which will include terminating any previously agreed-upon releases of sales proceeds) and tells borrowers exactly why FmHA plans to take such action. The form explains that the servicing options described in Form FmHA 1924–14 are available, and also explains that FmHA will proceed to liquidate a borrower's loan unless the borrower applies for at least one of the servicing options, appeals the adverse action using FmHA's administrative appeals procedure (found at Subpart B of Part 1900 of this chapter), cures existing defaults, or liquidates the loans. Borrowers who receive Form FmHA 1924–25 will also receive Form FmHA 1924–26. This form must be completed and returned to FmHA within 30 days of receipt to show whether the borrower wants to apply for servicing options, to appeal, to cure the default or to liquidate.

(a) *Borrower fails to respond.* The borrower is told on Form FmHA 1924–26 that the form must be returned to FmHA within 30 days of the day the borrower received Forms FmHA 1924–24, 1924–25, and 1924–26. The 30 days begins to run on the day the certified mail receipt was signed or, if the certified mail was refused, the 30 days begins to run on the date the certified mail receipt shows delivery was refused. If Form FmHA 1924–26 is not returned on time, FmHA will immediately proceed with the intended action(s). Such actions are not appealable.

(b) *Borrower checks block in Part I.* Part I of Form FmHA 1924–26 contains a list of available actions including rescheduling, reamortization, consolidation, deferral, subordination, limited resource loans, and the restructuring of the debt and business by selling a portion of the assets. If the borrower checks the block in Part I, the borrower will be considered for *all* the available servicing options. The County Supervisor will immediately send the borrower Exhibit A of Subpart A of Part 1951 of this chapter and the price list referred to in § 1924.57(d) of this subpart. The borrower must attend a conference with FmHA to develop financial statements and proposed operating plans which FmHA will use as a basis for granting or denying the requested servicing relief. The conference with the borrower will be set up in accordance with § 1951.33(c) of Subpart A of Part 1951 of this chapter. If the borrower attends the conference and the County Supervisor approves the request for servicing relief, then the notice of intent to take adverse action will be considered terminated. If the borrower attends the conference but the County Supervisor denies the servicing request, then the County Supervisor will notify the borrower in writing of the denial with the reasons and facts

supporting the denial. The borrower will be advised of appeal rights in accordance with Subpart B of Part 1900 of this chapter, and the appeal will cover both the denial of the request for servicing and the other adverse action FmHA intends to take. If the borrower (or representative) fails to attend the scheduled conference or fails to provide the necessary information, the borrower will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter.

(c) *Borrower checks blocks in Part II.* The borrower who does not want to be considered for any servicing request but who wants to request a conference with FmHA and/or an adminstrative appeal of FmHA's intended adverse action must so indicate by checking one of the appropriate blocks in Part II of Form FmHA 1924–26. Any appeal will be handled under Subpart B of Part 1900 of this chapter. If the borrower wants an appeal hearing, the borrower can be represented by counsel or by any other representative, and the hearing officer will be an FmHA employee who has not been previously involved in the borrower's case. The borrower can choose to have FmHA make a review on the record rather than hold a hearing. If the borrower prevails in the administrative appeal, no adverse action will be taken by FmHA. If instead the borrower completes Part II to show that no appeal is desired, then FmHA will immediately take the adverse action. If the borrower completes only Part II A, the borrower is entitled to a conference but not a hearing.

(d) *Borrower checks blocks in Part III.* The borrower who does not want to be considered for any servicing options or does not want to request an adminstrative appeal can choose to cure the default (that is, pay the delinquent account current or make restitution to FmHA for unauthorized disposition of security) and will so indicate by checking one of the blocks in Part III of that form. If the borrower checked any of the blocks in Part III, the borrower has 60 days from the day the borrower received Form FmHA 1924–26 to cure the default. If the action is not completed within 60 days, then FmHA will immediately proceed to take the adverse action against the borrower and no appeal will be allowed.

(e) *Borrower checks blocks in Part IV.* If the borrower does not want to be considered for any servicing options or to request an administrative appeal or to cure the default, the borrower can choose to liquidate the account (that is, sell the security, transfer it to someone else who will assume the FmHA debt, convey it to the Government or refinance the FmHA loan with another lender). The borrower will indicate this by checking one or more of the blocks in Part IV of Form FmHA 1924–26. The liquidation alternative chosen must be taken within 120 days of the day the borrower received Form FmHA 1924–26. If the borrower checked any block in Part IV but action is not completed within 120 days, then FmHA will immediately proceed to take the adverse action against the borrower and no appeal will be allowed.

* * * * *

## PART 1941—OPERATING LOANS

33. The authority citation for Part 1941 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Operating Loan Policies, Procedures, and Authorizations

34. Section 1941.1 is revised to read as follows:

**§ 1941.1 Introduction.**

This subpart contains regulations for making initial and subsequent insured Operating (OL) and Youth (OL–Y) loans. OL loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4–H, Future Farmers of America, and similar organizations. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of Part 1943 of this chapter for making OL loans to entrymen on unpatented public lands.

35. Section 1941.2 is revised to read as follows:

**§ 1941.2 Objectives.**

The basic objective of the OL loan program is to provide credit and management assistance to farmers, ranchers, and rural youth to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere.

36. Section 1941.4 is amended by redesignating paragraphs (l) through (q) as (n) through (s), by redesignating paragraphs (b) through (k) as (c) through (l), by revising newly designated paragraphs (h) and (k) and by adding new paragraphs (b) and (m) to read as follows:

**§ 1941.4 Definitions.**

* * * * *

(b) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

* * * * *

(h) *Joint operation.* Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

* * * * *

(k) *Nonfarm enterprise.* Any business enterprise, other than farming, but including recreation, which provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

* * * * *

(m) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A positive cash flow must show that a borrower will at least be able to:

(1) Pay all operating expenses and taxes and have a reserve for tax liability.

(2) Meet scheduled payments on all debts including any required payments on open accounts and on carryover debts.

(3) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses, such as providing for expenses for major repairs.

(4) Have a reasonable standard of living for the individual borrower or the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower.

(5) Provide for any essential capital purchases or improvements. Usually it is necessary to plan for a capital expenditures reserve which reflects the depreciating value of the property that will have to be replaced.

* * * * *

37. Section 1941.6 is amended by revising the introductory text, by redesignating paragraph (d) as paragraph (f) and adding new paragraphs (d) and (e) to read as follows:

**§ 1941.6 Credit elsewhere.**

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall determine, that adequate credit elsewhere is not available to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private (and guaranteed) and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time and the applicant's pre-application loan risk index (see Exhibit A of Subpart A of Part 1910 of this chapter).

* * * * *

(d) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor feels that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s), so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA.

(e) Property and interest in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators as individuals will be considered and used by an applicant in obtaining credit from other sources.

* * * * *

**§ 1941.10 [Removed and Reserved]**

38. Section 1941.10 is removed and reserved.

**§ 1941.11 [Amended]**

39. Section 1941.11 is amended by removing paragraph (b) and removing the designation of (a) from the first paragraph.

40. Section 1941.12 is amended by removing paragraph (a)(4) and redesignating paragraphs (a)(5) through (a)(8) as (a)(4) through (a)(7), by revising paragraphs (a)(1), (a)(3), newly designated (a)(4), newly designated (a)(7), (b)(3), (b)(4)(i), (b)(4)(ii), (b)(4)(iii), and introductory paragraph (b)(6) to read as follows:

**§ 1941.12 Eligibility requirements.**

(a) * * *

(1) Be a citizen of the United States (see § 1941.4(t) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(3) Have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation. (Except for youth loans.)

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

* * * * *

(7) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed (except for rural youths). In the case of a limited resource applicant see § 1941.4(j) of this subpart.

(b) * * *

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed (except for rural youths, limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members, stockholders, partners or joint operators who are *individuals* and *not* cooperative(s), corporation(s), partnership(s), or joint operation(s).

(4) * * *

(i) They must be citizens of the United States (see § 1941.4(t) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of the INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

* * * * *

(6) If applying as a limited resource applicant, as defined in § 1941.4(j) of this subpart:

* * * * *

41. Section 1941.17 is amended by revising paragraph (a) to read as follows:

**§ 1941.17 Loan limitations.**

(a) An OL loan will not be approved:

(1) If the total outstanding insured OL principal balance owed by the applicant or owed by anyone who will sign the note as a cosigner will exceed $200,000 at loan closing.

(2) If the total outstanding youth loan principal balance will exceed $10,000 at loan closing.

(3) For the purchase of real estate, making principal payments on real estate, or refinancing of any debts incurred for the purchase of real estate.

(4) For any purpose that will contribute to excessive erosion of highly erodible land or to convert wetlands to produce an agricultural commodity as

further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

(5) To pay land lease costs including cash rent.

(6) If an applicant's previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1) or if a debt settlement is currently being processed for the applicant under that part or if the applicant has been released from liability for an FmHA debt or if the applicant's property has been foreclosed on or repossessed by FmHA, unless the debt settlement, release or foreclosure was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement, release or foreclosure have been removed or will be removed by making the loan.

* * * * *

42. Section 1941.18 is amended by revising paragraph (a)(1)(i) and (b)(4) to read as follows:

**§ 1941.18 Rates and terms.**

(a) * * *

(1) * * *

(i) The applicant meets the conditions of the definition for a limited resources applicant set forth in § 1941.4(j) of this subpart.

* * * * *

(b) * * *

(4) When conditions warrant, installments scheduled in accordance with paragraph (b)(2) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be adequate collateral for the loan at the time the balloon installment is due. Circumstances which warrant balloon installment are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses. In *no case* will annual crops and/or machinery be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by real estate. The amount ballooned should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7 year period.

* * * * *

43. Section 1941.19 is amended by revising the introductory text, by removing paragraph (a)(3) and redesignating paragraph (a)(4) as (a)(3), by revising paragraph (b), by redesignating paragraphs (e) through (h) as (f) through (i), and by adding a new paragraph (e) to read as follows:

**§ 1941.19 Security.**

When a loan is made to an individual applicant, the loan approval official will require the best lien obtainable on all assets owned by the applicant. When a loan is made to an entity, the loan approval official will require the best lien obtainable on all assets owned by applicant, and all assets owned by members of the applicant entity. In either case a first lien will be required on crops when funds are advanced for crop production except as noted below:

* * * * *

(b) *Real estate.* If the applicant has an ownership interest in real estate, the loan approval official will require a lien on all of the applicant's real estate as security. The best lien obtainable will be taken on real estate. Real estate security may be taken for a portion of a loan when a separate advance and promissory note evidences such portion. Form FmHA 427–1 (State), "Real Estate Mortgage for_____," will be used to obtain such a lien, unless a State supplement requires a different form.

* * * * *

(e) *Special security requirements.* When OL loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an OL loan(s) as individual(s) or when OL loans are made to eligible individuals, who are members, stockholders, partners, or joint operators of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer programs insured or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

* * * * *

44. Section 1941.29 is amended by revising paragraph (b) to read as follows:

**§ 1941.29 Relationship between FmHA loans, insured and guaranteed.**

* * * * *

(b) An insured OL loan will not be made to a borrower with an outstanding guaranteed OL loan and paragraph (c) of this section is not intended to override this policy.

* * * * *

45. Section 1941.33 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(v), and by adding new paragraph (b)(1)(viii), by removing paragraph (c) and by redesignating paragraph (d) as (c) to read as follows:

**§ 1941.33 Loan approval or disapproval.**

* * * * *

(b) * * *

(1) * * *

(iv) The proposed loan shows a positive cash flow based upon a realistic farm and home plan or on other plans or documents acceptable to FmHA.

* * * * *

(viii) The loan risk index is favorable as set out in § 1910.4(c)(2) of Subpart A of Part 1910 of this chapter.

(2) * * *

(v) Indicate any other special requirements;

* * * * *

## Subpart B—Closing Loans Secured by Chattels

46. Section 1941.54 is amended by revising paragraph (b) to read as follows:

**§ 1941.54 Promissory Note.**

* * * * *

(b) *Signatures*—(1) *Individuals.* Only one person (the applicant) will sign the note as a borrower. If a cosigner is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the cosigner will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors (except a youth obtaining a youth loan) or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur personal liability for the indebtedness evidenced by such note.

*(2) Cooperative or corporations.* The appropriate officers will execute the note on behalf of the cooperative or corporation. The individuals designated by the cooperative or corporation that will operate the farm will sign the note as cosigner(s) and will be personally liable for the debt.

*(3) Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

47. Section 1941.57 is amended by revising paragraph (a)(1) to read as follows:

**§ 1941.57 Security instruments.**

* * * * *

(a) * * *

(1) Appropriate cooperative or corporation officials, on behalf of a cooperative or corporation. The instruments will also be executed by members of the cooperative and stockholders of the corporation who were required to sign the note; they will sign as individuals.

* * * * *

48. Section 1941.88 is amended by revising paragraph (a) to read as follows:

**§ 1941.88 Insurance.**

* * * * *

(a) *Chattel property.* Borrowers should be encouraged to carry insurance on chattel property, including growing crops, which serves as security for a loan and on other chattel or real property, in order to protect themselves against losses resulting from hazards existing in an area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies and inventory centrally stored over an extended period. When OL funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and those crops will serve as security for the loan, crop insurance *will be* required, if available for the area, as a loan approval condition and FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies). In all other cases, loan approval officials should encourage borrowers to obtain and maintain FCIC sponsored All-Risk Crop Insurance, if available, when it appears to be advantageous for the borrower. When All-Risk Crop Insurance is obtained by the borrower, an "Assignment of Indemnity" will be executed by the borrower, provided no prior "Assignment of Indemnity" has been given to another lienholder for the crop(s) in question. Only one assignment on a crop for any one year will be accepted by FCIC. An "Assignment of Indemnity" need not be required when the All-Risk Crop Insurance policy contains a standard mortgage clause naming FmHA as mortgagee or secured party.

* * * * *

49. Section 1941.96 is amended by revising paragraph (b) to read as follows:

**§ 1941.96 Changes in use of loan funds.**

* * * * *

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA 1940–17, "Promissory Note," will not be revised nor will a corrected Form FmHA 1941–7, "OL—and other Credit Analysis," be prepared. When funds loaned for the purchase of capital goods are to be used for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in Subpart A of this part. Appropriate changes with respect to the repayments will be made in Table K of Form FmHA 431–2, "Farm and Home Plan," also on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," and initialed by the borrower. Appropriate notations will be made in the "Supervisory and Servicing Actions" section of the Management System Card.

## PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

50. The authority citation for Part 1943 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

51. Section 1943.1 is revised to read as follows:

**§ 1943.1 Introduction.**

This subpart contains regulations for making initial and subsequent insured Farm Ownership (FO) loans. FO loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of this subpart for making FO loans to entrymen on unpatented public lands.

52. Section 1943.2 is revised to read as follows:

**§ 1943.2 Objectives.**

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family sized farms or to continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

53. Section 1943.4 is amended by redesignating paragraphs (n) through (p) as (p) through (r), by redesignating paragraphs (b) through (m) as (c) through (n), by revising newly designated paragraphs (f), (h) and (m) and adding new paragraphs (b) and (o) to read as follows:

**§ 1943.4 Definitions.**

* * * * *

(b) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

* * * * *

(f) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

* * * * *

(h) *Joint operation.* Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

* * * * *

(m) *Nonfarm enterprise.* Any business enterprise, other than farming, but including recreation, which provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

* * * * *

(o) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A positive cash flow

must show that a borrower will at least be able to:

(1) Pay all operating expenses and taxes and have a reserve for any tax liability.

(2) Meet scheduled payments on all debts including any required payments on open accounts and on carryover debts.

(3) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses, such as providing for expenses for major repairs.

(4) Have a reasonable standard of living for the individual borrower or the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower.

(5) Provide for any essential capital purchases or improvements. Usually, it is necessary to plan for a capital expenditures reserve which reflects the depreciating value of the property that will have to be replaced.

* * * * *

54. Section 1943.6 is amended by revising the introductory text, by redesignating paragraph (d) as (e) and adding a new paragraph (d) to read as follows:

**§ 1943.6 Credit elsewhere.**

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall determine, that adequate credit elsewhere is not available to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private (and guaranteed) and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time and the applicant's pre-application loan risk index (see Exhibit A of Subpart A of Part 1910 of this chapter).

* * * * *

(d) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor feels that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA.

* * * * *

55. Section 1943.7 is added to read as follows:

**§ 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.**

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operation to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, must have prior National Office approval before being issued.

56. Section 1943.10 is revised to read as follows:

**§ 1943.10 Preference.**

In addition to the preferences established in Subpart A of Part 1910 of this chapter, when there is a shortage of funds, an application for a loan for land purchase from an applicant who—

(a) Has a dependent family, or

(b) Is an owner of livestock and farm implements necessary to successfully carry on farming operations, or

(c) Is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

**§ 1943.11 [Amended]**

57. Section 1943.11 is amended by removing paragraph (b) and the designation "(a)" from the remaining paragraph.

58. Section 1943.12 is amended by removing paragraph (a)(4), redesignating paragraphs (a)(5) through (a)(8) as (a)(4) through (a)(7), by revising paragraphs (a)(1), (a)(3), newly designated paragraphs (a)(4) and (a)(7), (b)(3), (b)(4)(i), (b)(4)(ii) and (b)(4)(iii) to read as follows:

**§ 1943.12 Farm ownership loan eligibility requirements.**

* * * * *

(a) * * *

(1) Be a citizen of the United States (see § 1943.4(s) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(3) Have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

* * * * *

(7) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4(j) of this subpart).

(b) * * *

(3) Be the owner-operator of not larger than a family farm after the loan is closed (except for limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members, stockholders, partners, or joint operators who are *individuals* and *not* cooperative(s), corporation(s), partnership(s), or joint operator(s).

(4) * * *

(i) They must be citizens of the United States (see § 1941.4(s) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify

the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(ii) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

* * * * *

59. Section 1943.17 is amended by revising paragraph (a), by removing paragraphs (b) and (c), by redesignating paragraphs (d) and (e) as (b) and (c) respectively to read as follows:

**§ 1943.17 Loan limitations.**

(a) An FO loan will not be approved if:

(1) An applicant's previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1) or if a debt settlement is currently being processed for the applicant under the part or if the applicant has been released from liability for an FmHA debt or if the applicant's property has been foreclosed on or repossessed by FmHA, unless the debt settlement, release or foreclosure was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement, release or foreclosure have been removed or will be removed by making the loan.

(2) The total outstanding insured FO, Soil and Water (SW) or Recreation (RL) loan principal balance owed by the applicant or owed by anyone who will sign the note as a cosigner will exceed the lesser of $200,000 or the market value of the farm or other security.

(i) The State Director or a Farmer Programs staff member may determine that the market value is different from the appraiser's recommended market value.

(ii) The basis for changing the recommended market value must be documented in the comments section of the appraisal report and initialed by an employee who has been delegated authority to appraise farms.

(3) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(4) The limitation found in § 1943.29 of this subpart is exceeded.

* * * * *

60. Section 1943.18 is amended by revising paragraph (c)(1) to read as follows:

**§ 1943.18 Rates and terms.**

* * * * *

(c) * * *

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1943.4(j) of this subpart.

* * * * *

61. Section 1943.19 is revised to read as follows:

**§ 1943.19 Security.**

(a) When a loan is made to an individual applicant, the loan approval official will require the best lien obtainable on all assets owned by the applicant. When a loan is made to an entity, the loan approval official will require the best lien obtainable on all assets owned by the applicant, and all assets owned by members of the applicant entity, except a portion of the farm will be excluded when:

(1) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost provided:

(i) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(ii) To include the land would complicate loan servicing or liquidation; and

(iii) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(iv) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(2) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(i) The part excluded from the security is not included in the appraisal report, and

(ii) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(3) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(4) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1), except as modified by the "Memorandum of Understanding–FHA–FCA," Exhibit B of this subpart.

(5) The designated attorney, title insurance company, or the OGC will furnish advice on obtaining security when a life estate is involved.

(6) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in Part 1807 of this chapter (FmHA Instruction 427.1) provided the County Supervisor believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the FO loan.

(7) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by

the applicant and any other party whose signature is required.

(b) *Chattel security.* Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1941 and Subpart A of Part 1962 of this chapter.

(c) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(d) *Special security requirements.* When FO loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for an FO loan(s) as individual(s) *or* when FO loans are made to eligible *individuals,* who are members, stockholders, partners or joint operators of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

62. Section 1943.25 is amended by revising paragraph (c)(2) to read as follows:

**§ 1943.25 Options, planning, and appraisals.**

* * * * *

(c) * * *

(2) Real estate appraisals will be completed as provided in FmHA Instruction 422.1, available in any FmHA office. The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

* * * * *

**§ 1943.32 [Amended]**

63. Section 1943.32 is amended by adding at the end of the table: "443–8" in the FmHA Form No. column, "Agreement (Between Seller, Purchaser, and Tenant)" in the Name of form column, "4" in the Total No. of copies column, "4" in Signed by borrower column, "1–C" in the Loan docket column, and "1–C" in the Copy for borrower column.

64. Section 1943.33 is amended by revising paragraph (b)(1)(iv), and adding a new paragraph (b)(1)(viii) to read as follows:

**§ 1943.33 Loan approval or disapproval.**

* * * * *

(b) * * *

(1) * * *

(iv) The proposed loan shows a positive cash flow based upon a realistic farm and home plan or on other plans or documents acceptable to FmHA.

* * * * *

(viii) Determine that the loan risk index is favorable as set out in § 1910.4(c)(2) of Subpart A of Part 1910 of this chapter

* * * * *

65. Section 1943.38 is amended by revising paragraphs (g)(4)(i), (g)(4)(ii) and (g)(4)(iii) to read as follows:

**§ 1943.38 Loan closing actions.**

* * * * *

(g) * * *

(4) * * *

(i) *Individuals.* Only one person (the applicant) will sign the note as a borrower. If a cosigner is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the cosigner will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) *Cooperatives or corporations.* The appropriate officers will execute the note on behalf of the cooperative or corporation. The individuals designated by the cooperative or corporation that will operate the farm will sign the note as cosigner(s) and will be personally liable for the debt.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

* * * * *

## Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations.

66. Section 1943.51 is revised to read as follows:

**§ 1943.51 Introduction.**

This subpart contains regulations for making initial and subsequent insured Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of this part for making SW loans to entrymen on unpatented public lands. See Subpart R of Part 2000 of this chapter for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA.

67. Section 1943.52 is revised to read as follows:

**§ 1943.52 Objectives.**

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

68. Section 1943.54 is amended by redesignating paragraphs (l) and (m) as (n) and (o) respectively, by redesignating paragraphs (b) through (k) as (c) through (l), by revising newly designated paragraphs (e) and (h), adding new paragraphs (b) and (m) to read as follows:

**§ 1943.54 Definitions.**

* * * * *

(b) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

* * * * *

(e) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

* * * * *

(h) *Joint operation.* Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

* * * * *

(m) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A positive cash flow must show that a borrower will at least be able to:

(1) Pay all operating expenses and taxes and have a reserve for any tax liability.

(2) Meet scheduled payments on all debts including any required payments on open accounts and on carryover debts.

(3) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses, such as providing for expenses for major repairs.

(4) Have a reasonable standard of living for the individual borrower or the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower.

(5) Provide for any essential capital purchases or improvements. Usually it is necessary to plan for a capital expenditure reserve which reflects the depreciating value of the property that will have to be replaced.

* * * * *

69. Section 1943.56 is amended by revising the introductory text, by redesignating paragraph (d) as (e) and adding a new paragraph (d) to read as follows:

**§ 1943.56 Credit elsewhere.**

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall determine, that adequate credit elsewhere is not available to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private (and guaranteed) and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time and the applicant's pre-application loan risk index (see Exhibit A of Subpart A of Part 1910 of this chapter).

* * * * *

(d) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor feels that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed SW loan request can be processed by the lender for consideration by FmHA.

* * * * *

**§ 1943.60 [Removed and Reserved]**

70. Section 1943.60 is removed and reserved.

**§ 1943.61 [Amended]**

71. Section 1943.61 is amended by removing paragraph (b) and by removing the designation "(a)" from the remaining paragraph.

72. Section 1943.62 is amended by revising paragraphs (a)(1), (a)(3), (b)(1), (b)(2), (b)(3) and (b)(9) to read as follows:

**§ 1943.62 Soil and water loan eligibility requirements.**

* * * * *

(a) * * *

(1) Be a citizen of the United States (see § 1943.54(o) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information From Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(3) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

* * * * *

(b) * * *

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(2) Honestly try to carry out the conditions and terms of the loan. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see § 1943.54(o) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information From Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(9) Consist of members, stockholders, partners, or joint operators, who are *individuals* and *not* corporation(s), partnership(s), cooperative(s) or joint operation(s).

73. Section 1943.67 is revised to read as follows:

**§ 1943.67 Loan limitations.**

An SW loan will not be approved if:

(a) An applicant's previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1) or if a debt settlement is currently being processed for the applicant under that part or if the applicant has been released from liability for an FmHA debt or if the applicant's property has been foreclosed on or repossessed by FmHA, unless the debt settlement, release or foreclosure was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement, release or foreclosure have been removed or will be removed by making the loan.

(b) The total outstanding insured SW, Farm Ownership (FO) or Recreation (RL) loan principal balance owed by the applicant or owed by anyone who will sign the note as a cosigner will exceed

the lesser of $200,000 or the market value of the farm or other security.

(1) The State Director or a Farmer Programs staff member may determine the market value is different from the appraiser's recommended market value.

(2) The basis for changing the recommended market value must be documented in the comment section of the appraisal report and initialed by an employee who has been delegated authority to appraise farms.

(c) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(d) The limitation found in § 1943.79(c) of this subpart is exceeded.

(e) The loan is made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

74. Section 1943.69 is amended by revising paragraphs (a) and (b), by removing paragraphs (c) and (d), by redesignating paragraphs (e) and (f) as paragraphs (c) and (d) respectively and adding a new paragraph (e) to read as follows:

**§ 1943.69 Security.**

(a) When a loan is made to an individual applicant, the loan approval official will require the best lien obtainable on all assets owned by the applicant. When a loan is made to an entity, the loan approval offical will require the best lien obtainable on all assets owned by the applicant, and all assets owned by members of the applicant entity, except a portion of the farm will be excluded when:

(1) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(i) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(ii) To include the land would complicate loan servicing or liquidation; and

(iii) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(iv) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(2) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(i) The part excluded from the security is not included in the appraisal report; and

(ii) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(3) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(4) An SW loan is made just to finance construction of an alcohol or methane gas facility, a lien will be taken on the facility and sufficient other property to adequately secure the loan, even though a majority of the products are used on the farm. In these situations a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that a legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(5) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or ressonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(6) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(7) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in Part 1807 of this chapter (FmHA Instruction 427.1), provided the County Supervisor believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the SW loan.

(8) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(b) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(2) Chattel security liens will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1930 and Subpart B of Part 1941 of this chapter.

* * * * *

(e) *Special security requirements.* When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

75. Section 1943.75 is amended by revising paragraph (c)(2) to read as follows:

**§ 1943.75 Options, planning and appraisals.**

* * * * *

(c) * * *

(2) Real estate appraisals will be completed as provided in FmHA Instruction 422.1, available in any FmHA office. The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a

part of the appraised value of the real estate securing the loans.

* * * * *

76. Section 1943.83 is amended by revising paragraphs (a)(1) and (b)(1)(iv), and adding a new paragraph (b)(1)(viii) to read as follows:

**§ 1943.83 Loan approval or disapproval.**

(a) * * *

(1) Section 1943.67 of this subpart, containing loan limitations, is not violated.

* * * * *

(b) * * *

(1) * * *

(iv) The proposed loan shows a positive cash flow based upon a realistic farm and home plan or on other plans or documents acceptable to FmHA.

* * * * *

(viii) Determine that the loan risk index is favorable as set out in § 1910.4(c)(2) of Subpart A of Part 1910 of this chapter.

* * * * *

77. Section 1943.88 is amended by revising paragraphs (g)(4)(i), (g)(4)(ii), and (g)(4)(iii) to read as follows:

**§ 1943.88 Loan closing actions.**

* * * * *

(g) * * *

(4) * * *

(i) *Individuals.* Only one person (the applicant) will sign the note as a borrower. If a cosigner is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the cosigner will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) *Cooperatives and corporations.* The appropriate officers will execute the note on behalf of the cooperative or corporation. The individuals designated by the cooperative or corporation that will operate the farm will sign the note as cosigner(s) and will be personally liable for the debt.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

* * * * *

## Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

**§§ 1943.101 through 1943.150 [Removed and Reserved]**

78. Part 1943 is amended to remove and reserve Subpart C consisting of §§ 1943.101 through 1943.150.

## PART 1945—EMERGENCY

79. The authority citation for Part 1945 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

80. Sections 1945.1 through 1945.50 (Subpart A) are revised to read as follows:

## Subpart A—Disaster Assistance—General

Sec.

1945.1 [Reserved]
1945.2 Purpose.
1945.3–1945.4 [Reserved]
1945.5 Abbreviations.
1945.6 Definitions.
1945.7–1945.17 [Reserved]
1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).
1945.19 Reporting potential natural disasters and initial actions.
1945.20 Making EM loans available.
1945.21 Reporting and coordination requirements.
1945.22–1945.24 [Reserved]
1945.25 Relationship between FmHA and FEMA.
1945.26 Relationship between FmHA and SBA.
1945.27 Relationship between FCIC and FmHA.
1945.28 Relationship between ASCS and FmHA.
1945.29 [Reserved]
1945.30 FmHA Emergency Loan Support Teams (ELST).
1945.31 FmHA Emergency Loan Assessment Teams (ELAT).
1945.32—1945.34 [Reserved]
1945.35 Special EM loan training.
1945.36–1945.44 [Reserved]
1945.45 Public information function.
1945.46–1945.50 [Reserved]

## Subpart A—Disaster Assistance—General

**§ 1945.1 [Reserved]**

**§ 1945.2 Purpose.**

This subpart describes and explains the types of incidents which can result in an area being determined a disaster area, thereby making qualified farmers in such areas eligible for Farmers Home Administration (FmHA) Emergency (EM) loans. With respect to natural disasters, it sets forth the responsibility of the Secretary of Agriculture; the factors used in making a natural disaster determination; the relationship between FmHA and the Federal Emergency Management Agency (FEMA); the method for establishing and using Emergency Loan Support Teams (ELST) and Emergency Loan Assessment Teams (ELAT); the training of FmHA personnel; and disaster related public information functions. The natural disaster determinations/notifications made under this subpart do not apply to any program other than the FmHA EM loan program. FmHA's policy is to make EM loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract) as provided by law.

**§§ 1945.3–1945.4 [Reserved]**

**§ 1945.5 Abbreviations.**

The following abbreviations are used in this subpart.

(a) ASCS—Agricultural Stabilization and Conservation Service.

(b) DAR—Damage Assessment Report.

(c) ELAT—Emergency Loan Assessment Team.

(d) ELST—Emergency Loan Support Team.

(e) EM—Emergency.

(f) EOH—USDA Emergency Operations Handbook.

(g) FAC—Food and Agriculture Council.

(h) FCIC—Federal Crop Insurance Corporation.

(i) FCO—Federal Coordinating Officer.

(j) FEMA—Federal Emergency Management Agency.

(k) FmHA—Farmers Home Administration.

(l) LFAC—Local Food and Agriculture Council.

(m) OMB—Office of Management and Budget.

(n) SBA—Small Business Administration.

(o) SFAC—USDA State Food and Agriculture Council.

(p) SRS—State Statistical Office of the USDA Statistical Reporting Service.

(q) USDA—United States Department of Agriculture.

**§ 1945.6 Definitions.**

The following definitions are applicable to this subpart:

(a) *Applicant.* The person or entity carrying on the farming operation at the time of the disaster and requesting EM loan assistance from FmHA.

(b) *County.* A local administrative subdivision of a State or a similar political subdivision of the United States.

(1) *Primary county.* A county determined to be a disaster area.

(2) *Contiguous county.* A county that touches a primary county at any point.

(c) *Disaster.* A natural disaster, as determined by the Secretary of Agriculture or the FmHA Administrator, or a major disaster or emergency declared by the President.

(1) *Major disaster.* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the "Disaster Relief Act of 1974," above and beyond normal emergency services available from Federal, State and local governments.

(2) *Presidential emergency.* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which is of such magnitude that the President makes a declaration requiring Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(3) *Natural disaster.* A disaster in any part of the United States in which unusual and adverse weather conditions or other natural phenomena have substantially affected farmers by causing severe physical property losses and/or severe production losses within a county. Except where otherwise specified, the use of the term county or similar political subdivision is for administrative purposes only.

(i) Unusual and adverse weather conditions or natural phenomena include such things as:

(A) A major single natural occurrence or event such as a blizzard, cyclone, earthquake, hurricane or tornado.

(B) A single storm, or series of storms, accompanied by severe hail, excessive rain, heavy snow, ice and/or high wind.

(C) An electrical storm.

(D) A severe weather pattern over a period of time which, due to excessive rainfall, unusual lack of rainfall, or periods of high or low temperatures, causes flooding, substantial water damage, drought or freezing, or which results in the spreading and flourishing of insects or pests, or in plant or animal diseases spreading into epidemic proportions, or prevents the control of fire, however caused.

(ii) Severe physical property losses are those which the Administrator determines prior to a natural disaster determination by the Secretary, to be severe, and to have caused extensive damage to or destruction of, physical farm property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock, livestock products; poultry; poultry products; growing crops (see § 1945.163(b)(11) of Subpart D of Part 1945 of this chapter); harvested crops, and supplies which, if not repaired or replaced, would make it impossible for farmers affected by the unusual and adverse weather conditions to continue operating their farms on a sound basis.

(iii) Severe production losses within a county are those in which either:

(A) The Secretary determines that there has been a reduction countywide of at least 30 percent of the normal year's dollar value of all crops, including hay and pasture, and the crops could not be replanted or replaced with a substitute crop, or

(B) The Secretary determines that there has been a 30 percent loss countywide in the normal year's dollar value of a single enterprise (as defined in § 1945.154(a)(13)(i) of Subpart D of Part 1945 of this chapter); or

(C) The Secretary, after exercising discretion, determines that, although the conditions set forth in § 1945.6(c)(3)(iii) (A) and (B) of this subpart have not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such extenuating circumstances as to warrant a finding that a natural disaster has occurred. In making this determination, the Secretary may request the Administrator to provide for consideration such factors as (*1*) the nature and extent of production losses; (*2*) the number of farmers who have sustained qualifying production losses; (*3*) the number of farmers in paragraph (c)(3)(iii)(C)(*2*) of this section that other lenders in the county indicate they will not be in position to finance; (*4*) whether the losses will cause undue hardship to a certain segment of farmers in the county; (*5*) whether damage to particular crops has resulted in undue hardship; (*6*) whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and (*7*) any other factors considered relevant. The Secretary will consider the information set forth in § 1945.6(i) of this subpart in deciding whether a natural disaster has occurred.

(4) *Potential natural disaster.* Unusual and adverse weather conditions or natural phenomena that have caused physical and/or production losses, but which have not yet been examined by the Secretary or the Adminstrator for consideration as a natural disaster.

(d) *Disaster area(s).* The county(ies) declared/designated as a disaster area for EM loan assistance as a result of disaster related losses. This includes counties named as contiguous to those counties declared/designated as disaster areas.

(e) *Farmers.* Individuals, cooperatives, corporations or partnerships who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

(f) *Incidence period.* The specific date or dates during which a disaster occurred.

(g) *National Office.* The Director, Emergency Division.

(h) *Normal year's dollar value.* The FmHA National Office will determine the normal year's dollar value by establishing a normal year yield and price. Normal year yield will be the average yield of the 5 years immediately preceding the disaster year for each cash crop, including hay and pasture, grown in the county. The price will be the average commodity price for the 36 months immediately preceding the disaster year for each crop. Yields and prices used to establish the value of normal production will be obtained from the SRS. In cases where crops produced and/or prices are not available from SRS, the information will be obtained from other reliable sources. Yields used to establish the disaster year's production will be obtained from DARs which are prepared by the LFACs and SFACs. Prices used to establish the value of disaster year production will be the same as those used to establish normal year values.

(i) *Substantially affected.* A farmer applicant has been substantially affected when there has been a disaster as defined in paragraph (c) of this section, and the applicant has sustained qualifying physical and/or production losses, as defined in § 1945.154(a) of Subpart D of Part 1945 of this chapter.

(j) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted. For both physical and production losses, the termination date will be 8 months from the date of the disaster declaration/determination/notification.

(k) *United States or State.* Each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**§§ 1945.7–1945.17 [Reserved]**

**§ 1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).**

There is a USDA FAC established by the Secretary to serve every State and every County in the United States. The FACs are responsible for reporting the occurrence of and assessing the damage caused by potential disasters, as required to ensure that the Department's disaster programs are implemented when and where needed; to coordinate the Department's EM disaster programs with those of other Federal departments and agencies; and to provide personnel, as needed and requested by FEMA, to help staff disaster assistance centers in major disaster areas.

(a) *State Food and Agriculture Council (SFAC).* The SFACs are composed of representatives of the several USDA agencies having emergency program responsibilities at the State level. The chairpersons of the SFACs are the ASCS State Executive Directors. FmHA State Directors are members of the SFACs.

(b) *Local Food and Agriculture Council (LFAC).* These councils are composed of representatives of the several USDA agencies having available personnel at the County level. The chairpersons of the LFACs, in most cases, are the ASCS County Executive Directors. The FmHA County Supervisors are members of the LFACs.

(c) *FAC policies and procedures.* These policies and procedures are set forth in the USDA Emergency Operations Handbook (EOH), available in any ASCS or FmHA Office.

**§ 1945.19 Reporting potential natural disasters and initial actions.**

(a) *Purpose.* The purpose of reporting potential natural disasters is to provide a systematic procedure for rapid reporting of the occurrence and extent of damage and loss caused by such events which may result in a natural disaster determination.

(b) *Responsibility for assessing and reporting disasters.* USDA SFACs and LFACs representing their member agencies are best qualified at the State and County levels to accomplish the assessment of agricultural production losses resulting from a potential natural disaster. These councils are charged with the responsibility of reporting the occurrence of and assessing the damage caused by disasters and will perform this responsibility under policies and procedures as set forth in the EOH.

(c) *Actions to be taken.* Immediately after the occurrence of a potential natural disaster:

(1) When physical losses only occur, the FmHA County Supervisor will report to the State Director who will advise the Administrator that there has been a potential natural disaster with physical property losses to one or more farmers. This report must be made to the Administrator within 3 months from the last day of the disaster incidence period. Upon receiving the report, the Administrator will decide whether a natural disaster has occurred. If it has, the Administrator will make EM loans available to any otherwise qualified applicant who has suffered qualifying physical losses. Availability of EM loan assistance under this Administrator action shall be limited to physical losses only. Notices that EM loans are available will identify the county in which the unusual and adverse weather condition, or natural phenomenon has occurred and also each contiguous county.

(2) When physical and/or production losses occur, the FmHA County Supervisor will report to the LFAC chairperson, as specified in the EOH, all substantial physical property loss, damage or injury and severe production losses that have occurred in the County Office area. The County Supervisor will assist the LFAC in preparing the 24 hour report required in paragraph (c)(3) of this section. If the LFAC has not completed its 24 hour report within two workdays after the occurrence of a potential natural disaster, the County Supervisor will report to the State Director on Form FmHA 1945–27, "Report of Natural Disaster." In urgent situations, the report may be made by telephone, followed by the LFAC report or Form FmHA 1945–27. Either of these reports will be based on information obtained from personal knowledge and from farmers, agricultural and community leaders, and from any other personally contacted reliable source(s). The County Supervisor will convey to the LFAC chairperson all information pertaining to the potential disaster and provide the chairperson with a copy of Form FmHA 1945–27, if prepared.

(3) The LFAC will report the potential natural disaster, in accordance with the EOH, to:

(i) The SFAC, Vice Chairperson; and

(ii) Appropriate county Government representative(s).

(4) The SFAC will provide copies of the LFAC report to:

(i) The USDA Washington Offices of ASCS, FmHA and Office of Intergovernmental Affairs; and

(ii) The State Governor's Emergency Coordinator and the State Department of Agriculture.

(5) The FmHA State Director will inform the National Office of each potential natural disaster as soon as possible and forward to the National Office a copy of the LFAC report or Form FmHA 1945–27, with any attachments, and supplemented with the State Director's comments and recommendations. The State Director must include a statement as to the number of farmers, ranchers, and aquaculture operators affected by the potential natural disaster. In urgent situations, the State Director will report to the National Office, Emergency Division, by telephone, and immediately thereafter send a written report to the National Office, Emergency Division. The State Director will continually notify the SFAC Chairperson, Emergency Programs, of any additional information received concerning the potential natural disaster.

(6) When inquiries are received from persons affected by a potential natural disaster, they will be provided the following information:

(i) By the County Office:

(A) The kind of assistance that will be available if the President declares a major disaster or emergency, or if the Secretary determines that a natural disaster has occurred.

(B) Whether or not physical property loss EM loans are available.

(C) That applications for EM loans may be filed for future processing if such loans are made available, or may be filed at a later date after the necessary determinations have been made.

(D) Whether regular FmHA farm loan assistance is available.

(ii) State Office, or the National Office, will furnish the same information as the County Office, or will refer the person to the approprite County Office.

(7) When inquiries are received from a Governor, a County Governing Body or Indian Tribal Council concerning a potential natural disaster, they will be informed of the procedure for making EM loans available.

(8) The actions required in paragraph (b) of this section will be taken even if the Governor of a State has requested the President to declare a county(ies) a major disaster or Presidential emergency area.

**§ 1945.20 Making EM loans available.**

EM loans will be made available to applicants having qualifying severe

physical and/or production losses within a county named by FEMA as eligible for Federal assistance under a major disaster or emergency declaration by the President; or under a natural disaster determination by the Secretary of Agriculture, pursuant to § 1945.6 (c)(3)(iii) of this subpart; and to applicants having qualifying severe physical property losses when, prior to action by the President or the Secretary, the FmHA Administrator has determined, (pursuant to § 1945.6 (c)(3)(ii) of this subpart) that such losses have occurred as a result of a natural disaster. Any determination made by the Secretary or the Administrator, pursuant to this subpart may be revised or reversed upon the receipt of new facts which establish that a change is warranted. FmHA's policy is to make loans to any otherwise qualified applicant. When a county has been designated/declared a disaster area where eligible farmers may qualify for EM loans due to a disaster(s) occurring on or after May 31, 1983, under this section, all other counties contiguous to the eligible county(ies) are also named as areas where EM actual loss loans may be made to applicants whose operations have been substantially affected by the same disaster(s).

(a) *Declaration by the President.* When there is a Presidential major disaster or emergency declaration and FEMA has notified the FmHA National Office, the following actions will be taken:

(1) The National Office will immediately:

(i) Notify the State Director and the Director, Finance Office by telephone and confirm by electronic message. The notification will contain:

(A) The date of the declaration;

(B) The name(s) of the county(ies) determined eligible for Federal disaster assistance;

(C) The type of disaster;

(D) The incidence period for the disaster;

(E) The termination date for accepting applications; and

(F) The disaster declaration number [Examples: Major Disasters, M491; or Presidential Emergency, E061].

(ii) Take the actions required by § 1945.21(a)(1) of this subpart.

(2) The State Director will immediately:

(i) Notify the appropriate County Supervisor(s) to make EM loans available in the declared counties, and confirm this notification by a State supplement containing information listed in paragraphs (a)(1)(i) (A) through (F) of this section.

(ii) Notify the SFAC Vice Chairperson, Emergency Programs, in writing; and

(iii) Make such public announcements as seem appropriate to inform the farm community.

(3) The County Supervisor will immediately upon receiving notification that the county(ies) has been declared a disaster area:

(i) Notify the Chairperson LFAC in writing;

(ii) Make such public announcements as seem appropriate to adequately inform the local farm community;

(iii) Arrange and conduct meetings with local agricultural lenders and agricultural leaders within 10 working days after the disaster declaration date to explain the purpose and the assistance available under the EM loan program; and

(iv) Be available to help staff the FEMA disaster assistance centers, when requested to do so.

(b) *Determination by the Secretary of Agriculture.* When a potential disaster has substantially affected farmers, causing qualifying severe losses and it is requested by a Governor or Indian Tribal Council that there be a determination that a natural disaster has occurred, *the Secretary will acknowledge the request in writing and consider whether a determination should be made, provided the Secretary receives such request in writing within three months of the last day of the occurrence of such potential disaster.* The Governor or Indian Tribal Council should send a copy of the request to the FmHA State Director. When the Secretary finds based on the material received pursuant to this subpart that the conditions of § 1945.6(c)(3)(iii) (A) or (B) have been met, it shall be announced that a natural disaster has occurred. Also, if on finding that the conditions of § 1945.6(c)(3)(iii)(C) of this subpart so warrant, the Secretary may determine that a natural disaster has occurred.

(1) Upon receipt of the Governor's or Indian Tribal Council's request through the Secretary's Office, the FmHA National Office will immediately take the following actions:

(i) Notify the State Director by telephone of the Governor's request.

(ii) Obtain an immediate report from the State Director on whether there have been severe physical property losses within each of the counties requested by the Governor or Indian Tribal Council.

(iii) Obtain a report from the State Director on production losses.

(2) The State Director will immediately:

(i) Notify the SFAC Vice Chairperson, Emergency Programs, that a DAR is needed, unless the Governor has already made such request to the SFAC Chairperson, in accordance with the EOH for the requested county(ies); and

(ii) Advise the National Office on whether qualifying physical property losses have occurred.

(iii) Review each DAR, as soon as it is available, and forward it to the National Office with written comments on the extent of probable qualifying production losses, and other factors which are recommended for consideration by the Secretary in making determinations under § 1945.6(c)(3) of this subpart. The State Director will also submit to the National Office a list of all agricultural commodities produced in the State, giving the average yearly prices for each commodity for the three years immediately preceding the disaster year; the county average yields for each commodity for the five years immediately preceding the disaster year; and any additional supportive information. Yields and prices data will be used to establish the normal year's production and will be obtained from the USDA Statistical Reporting Service (SRS) by the State Director. In cases where crops produced and/or prices are not available from SRS, the information will be obtained from other reliable sources.

(iv) Upon receipt of the Administrator's request for a survey in connection with a request by the Secretary for information needed concerning § 1945.6(c)(3)(iii)(C), expeditiously gather and compile the information requested and submit it to the Administrator with a recommendation. The survey will be conducted in a manner jointly agreed upon by the Administrator and the State Director.

(3) The National Office will:

(i) Immediately use the State Director's report and accompanying price and yield information to analyze and verify losses reported in the DAR(s), along with any other information and comments provided by the State Director.

(ii) Promptly forward a written report to the Secretary, along with supporting information, for use by the Secretary in making a decision on the requested natural disaster determination.

(4) The Secretary will review the results of the survey and determine whether a natural disaster has occurred.

(i) When the Secretary determines that a natural disaster has occurred:

(A) The Administrator will be directed to make EM loans available in the county(ies) named by the Secretary, as provided by law.

(B) The Administrator will notify the State Director, by electronic message, of the Secretary's decision. Such notice will not be given to the State Director until the Secretary has notified the Governor or Indian Tribal Council, from whom the natural disaster determination request was received.

(C) The National Office will immediately pursue the same course of action as described in paragraph (a)(1) of this section, except the disaster determination number will be coded S and three numbers (Example S141).

(D) The State Director will immediately pursue the same course of action as described in paragraph (a)(2) of this section.

(E) The County Supervisor will immediately pursue the same course of action as described in paragraph (a)(3) of this section.

(ii) When the Secretary determines that the conditions in § 1945.6(c)(3)(iii) (A) or (B) of this subpart have *not* been met, and decides to consider other factors in accordance with § 1945.6(c)(3)(iii)(C) of this subpart, the Secretary will:

(A) Request that the Administrator provide additional information for consideration through an actual survey of farmers and lending institutions in the county(ies) requested to be determined a natural disaster area.

(B) The Administrator will instruct the State Director to conduct the survey focusing on such factors as:

(*1*) The nature and extent of production losses;

(*2*) The number of farmers who have sustained qualifying production losses;

(*3*) The number of farmers in paragraph (b)(4)(ii)(B)(*2*) of this section that other lenders in the County Office area indicate they will not be in a position to finance;

(*4*) Whether the losses will cause undue hardship to a certain segment of farmers in the county;

(*5*) Whether damage to particular crops has resulted in undue hardship;

(*6*) Whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and

(*7*) Any other factors considered relevant.

(iii) If the Secretary finds that the conditions of § 1945.6(c)(3)(iii) (A) or (B) of this subpart have *not* been met, and decides that the conditions do not warrant a natural disaster finding under § 1945.6(c)(3)(iii)(C) of this subpart, the Governor or Indian Tribal Council and other concerned officials will be notified of this and the reason(s) for the Secretary's conclusions.

(c) *Notification by the FmHA Administrator.* When the Administrator determines that an unusual and adverse weather condition or natural phenomenon has substantially affected farmers, causing qualifying severe *physical losses*, the Administrator will make EM physical loss loans available in the county(ies) identified and notify the State Director by electronic message.

(1) The Administrator, upon notifying the State Director that EM physical loss loans are to be made available, will issue the following:

(i) The Administrator's notification number (Example: N181);

(ii) The incidence period for the natural disaster; and

(iii) The termination date for accepting applications.

(2) The State Director upon receiving written notification by electronic message from the Administrator will notify:

(i) Appropriate County Supervisor(s) to commence processing EM loan applications in appropriate county(ies).

(ii) The SFAC Vice Chairperson, Emergency Programs; and

(iii) The news media with appropriate announcements.

(3) The Administrator will notify the Office of the Secretary of Agriculture of any action taken concerning physical property losses. The National Office will also provide the same information to the appropriate Governor or Indian Tribal Council, FEMA, ASCS, SBA and other concerned officials at their request.

(4) Upon notification from the State Director that EM loans are available in a county, the County Supervisor will pursue the course of action described in § 1945.20(a)(3) of this subpart.

(d) *Relationship between Administrator's notification and Secretary's determination.* Both the Administrator and the Secretary can make natural disaster determinations affecting the same county:

(1) When the Administrator has made physical loss loans available pursuant to § 1945.6(c)(3)(ii), and the Secretary later makes production loss loans available pursuant to § 1945.6(c)(3)(iii) on the basis of the same unusual and adverse weather condition or natural phenomenon, such physical and production losses will be considered to be caused by a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of Subpart D of Part 1945 of this chapter.

(2) When a series of unusual and adverse weather conditions or natural phenomena occur in a county within the same crop year, and it is not possible for the Secretary to assess the damages in order to determine whether the conditions in § 1945.6(c)(3)(iii) have been met until the end of such series or the crop year, a determination that a natural disaster has occurred shall be considered for both physical property and production losses to be due to a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of Subpart D of Part 1945 of this chapter.

(e) *Extension of termination dates for continuing disaster conditions.* When a natural disaster continues beyond the date on which an Administrator's notification or Secretary's determination is made, and when there are continuing losses or damages caused by that disaster, the Administrator will extend the incidence period and the termination date for such specified period as the Administrator finds appropriate, but not in excess of 60 days. The following actions will be taken to obtain an extension:

(1) The County Supervisor will advise the State Director of the conditions for which an extension is requested.

(2) The State Director will make a recommendation to the Administrator on whether an extension should be granted; and

(3) The Administrator will, if the request is granted:

(i) Amend the initial notification/determination (using the same number) by establishing a new incidence period and termination date; and

(ii) Notify the State Director by electronic message.

(f) *Limitations.* When actions are authorized by the Secretary or the Administrator under paragraphs (b) or (c) of this section, such actions will ordinarily be completed within six months after the beginning date of the incidence period of a reported disaster, except when the actions required in paragraph (b)(2) of this section cause a delay beyond the six months period, in which event the actions must be completed within nine months of the beginning date of the incidence period. The Secretary may extend this limitation up to 12 months from the beginning date of the incidence period if there were other exceptional causes for the delay.

**§ 1945.21 Reporting and coordination requirements.**

After EM loans are made available under § 1945.20 of this subpart, the following actions will be taken immediately:

(a) *By the National Office.* The Administrator or a designee will:

(1) Submit weekly reports to the following, informing them of the past week's disaster actions taken by FmHA. If no actions are taken in any particular week, negative reports will be made:

(i) The Secretary of Agriculture or the Secretary's designee;

(ii) The Director of the FmHA Finance Office;

(iii) The FEMA;

(iv) The SBA Central Office;

(v) The ASCS National Office;

(vi) The FCIC National Office;

(vii) The OMB;

(viii) The National Oceanic and Atmospheric Administration; and

(ix) The Office of Governmental and Public Affairs.

(2) The weekly reports will contain the following information:

(i) The date of the declaration/determination/notification;

(ii) The name(s) of any county(ies) in which EM loans are available.

(iii) The nature of the damages and losses; and

(iv) The termination date for accepting EM loan applications.

(b) *By the State Director.* (1) Notify the appropriate County Supervisor(s) of the:

(i) Name(s) of any county(ies) in which EM loans are available;

(ii) Date of the declaration/determination/notification;

(iii) Disaster number;

(iv) Type of disaster

(v) Incidence period; and

(vi) Termination date for accepting applications.

(2) Notify the State ASCS Executive Director of the authority to make EM loans. Promptly have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA on Disaster Assistance, Exhibit A of FmHA Instruction 2000–JJ (available in any FmHA office). Arrive at a mutual understanding as to how ASCS disaster program benefits are to be handled in conjunction with the processing of FmHA EM actual loss loans, so that duplication of benefits for the same losses are not received by disaster victims;

(3) Contact the FCIC Field Operations Office Director to review the Memorandum of Understanding between FCIC and FmHA, Exhibit A of FmHA Instruction 2000–N (available in any FmHA office), and arrive at a mutual understanding as to how FCIC indemnity payments are to be handled in conjuction with the processing of EM actual loss loans so that duplication of benefits for the same losses are not received by disaster victims;

(4) Make appropriate public announcements, including notices in Indian Tribal Council(s) news media. However, if the declaration was by the President, under § 1945.20(a) of this subpart, news releases should be cleared with the FEMA; and

(5) If the FEMA notifies the State Director that an agreement between the State and Federal Government (FEMA) has been made to provide 408 grants in a major disaster area to those suffering damages and losses to housing and personal property, who *are ineligible* for disaster loan assistance through the FmHA and/or SBA, the following actions will be taken:

(i) The State Director will notify the appropriate County Supervisor(s) of the address and phone number of the nearest FEMA office in the Supervisor's area; and

(ii) At the close of business each week, the County Supervisor will forward to FEMA a list of applicants claiming physical losses who *do not qualify for EM* loan assistance, with the reason(s) they do not qualify.

(c) *By the County Supervisor.* (1) Notify the County ASCS Executive Director of the declaration/determination/notification and have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA on Disaster Assistance, Exhibit A of Subpart JJ of Part 2000 (available in any FmHA office), to arrive at a mutual understanding as to how ASCS disaster program benefits and other information in ASCS's records will be made available and used in processing EM actual loss loans. Also, the County Supervisor will request that information regarding the availability of EM loans be placed in the ASCS's newsletter;

(2) Notify the County Governing Body, Indian Tribal Council(s), and make appropriate public announcements including notices in Indian Tribal Council(s') news media; and

(3) Explain the assistance available under the EM program to agricultural lenders and leaders in the area including Indian agricultural lenders and leaders.

**§§ 1945.22–1945.24 [Reserved]**

**§ 1945.25 Relationship between FmHA and FEMA.**

(a) *General.* When a major disaster or emergency declaration is made by the President, the FEMA is charged with the responsibility for seeing that disaster assistance is made available to disaster victims. Also, FEMA is responsible for coordinating the actions of other Federal agencies who have programs to provide disaster assistance. A Federal Coordinating Officer (FCO) is appointed for each major disaster or emergency to coordinate Federal assistance in the disaster area.

(b) *Before the declaration.* (1) When a request for a major disaster or emergency declaration is made by the Governor of a State, the FEMA through its Regional Director is responsible for obtaining an assessment of the losses and damages to respond to the request.

(2) If the FEMA makes a request for information from FmHA on losses and damages caused by an unusual and adverse weather condition or natural phenomenon, the FEMA representative will be advised to contact the SFAC Chairperson. The EOH provides that the SFAC will request the LFAC to prepare the DAR. State Directors and County Supervisors should cooperate with SFAC and LFAC Chairpersons in preparing the DARs.

(c) *After the declaration.* When a major disaster has been declared by the President and the FEMA establishes a disaster assistance center(s) in the local disaster area(s):

(1) The SFAC will be responsible for:

(i) Selecting qualified USDA employees to represent USDA at each center, after consulting with other council members in making the selection. FmHA State Directors will cooperate with the SFAC in seeing that centers are properly staffed.

(ii) Orienting the selected employees on all current USDA disaster programs. FmHA State Directors will cooperate in this orientation to ensure that the USDA representatives at the center(s) are familiarized with the FmHA EM loan program and other FmHA loan programs that could be of assistance to the disaster victims; and

(iii) Informing the FEMA that USDA representatives are available to help at each of the assistance centers.

(2) The FmHA State Director will be responsible for pursuing the following policy in working with the FEMA and the FCO by:

(i) Authorizing receipt of EM loan applications in the counties named by the FEMA. However, no EM loans can be approved until the National Office has given such notification as prescribed in § 1945.20(a)(1) of this subpart;

(ii) Attending or delegating a representative to attend any meeting(s) called by the FCO to discuss Federal

assistance under the disaster declaration;

(iii) Advising the FCO to contact the SFAC Chairperson, if a request is made by the FCO for FmHA employees to help staff the FEMA's Disaster Assistance Centers; and

(iv) Advising the FCO that reports on FmHA EM loan activity will be provided periodically, if requested, but not more often than once a week.

**§ 1945.26 Relationship between FmHA and SBA.**

(a) *General.* Public Law 99–272 made agricultural enterprises ineligible for SBA physical disaster and economic injury loan programs. However, in disaster areas declared by the President or the SBA Administrator, the SBA will continue to accept physical disaster loan applications for losses to dwellings and/or personal household contents, regardless of whether the dwelling is located on a farm or nonfarm tract. It is the policy of USDA and FmHA to cooperate with SBA in the use of each agency's respective loan making authorities, to complement the activities of each other; and to the extent possible, improve the delivery of disaster assistance to the agricultural segment of the country and minimize the potential for duplication of benefits for the same losses from the disaster loan programs administered by the two agencies.

(b) *Preventing duplication of disaster program benefits.* Preventing borrowers from receiving duplicate disaster program benefits will be assured by taking the following precautions:

(1) For all counties named by FEMA under a major disaster or Presidential emergency declaration, the FmHA County Offices will notify the appropriate SBA Disaster Area Office of all EM loan applications received each day, for damage or loss of farm dwellings and/or loss of household contents. Notice will be given by forwarding to SBA a photocopy of the applicant's completed Form FmHA 410–1, "Application for FmHA Services." Block 22 of the form should indicate the purpose for which the loan was requested, and whether the request is based on production and/or physical losses.

(2) For each application referred to in paragraph (b)(1) of this section, FmHA County Offices will send a copy of each action taken with EM loan applications to the appropriate SBA Disaster Area Office. Those actions include: The letter confirming County Committee eligibility determination; loan approval, Form FmHA 1940–1, "Request for Obligation of Funds"; notification of application withdrawal; notification of loan denial; confirmation of request for reconsideration or appeal of loan denial; and final determination on appeal of loan denial.

(3) A farm applicant may elect to obtain SBA financing for physical damage or loss to the dwelling and household contents, and separate financing from FmHA to cover damages or losses to the farming operation. Accordingly, applicants who elect to receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA EM loan assistance in disaster areas declared by the President or the SBA Administrator. An EM loan will *not* be approved until it is determined the requirements of § 1945.163 (d) of Subpart D of this part will be met. When an EM loan is approved, the FmHA County Office will notify the SBA Disaster Area Office, pursuant to paragraph (a)(4)(ii) of § 1945.183.

(c) *How SBA disaster loans are made available.* SBA disaster loans are available in counties:

(1) Named by the FEMA under a major disaster or emergency declaration by the President; for physical loss and/or economic injury disaster loans.

(2) Declared by the SBA Administrator for physical loss and economic injury disaster loans.

(d) *Notification of SBA disaster areas.* The SBA Central (National) Office will notify the FmHA National Office when its disaster loan program is made available. The FmHA National Office will notify State Directors, by memorandum, of the SBA disaster areas; and State Directors will notify the appropriate County Supervisor(s) in writing.

**§ 1945.27 Relationship between FCIC and FmHA.**

(a) *General.* Exhibit A of FmHA Instruction 2000–N (available in any FmHA office) is a Memorandum of Understanding between FCIC and FmHA. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the FCIC and the FmHA by providing encouragement to regular and FmHA EM loan borrowers to use Federal All-Risk Crop Insurance, where available; assist FmHA borrowers to obtain All-Risk Crop Insurance or other agricultural commodity insurance coverage; and exchange information essential to the elimination of duplicating compensatory disaster benefits from the FCIC and FmHA for the same disaster losses.

(b) *Annual meeting with FCIC.* FmHA State Directors will meet with FCIC Field Operations Office Directors at least once each year to review the Memorandum of Understanding and rededicate their efforts and those of their respective agency employees to comply with the agreements contained in the Memorandum of Understanding.

(c) *Contact after EM actual loss loans are made available.* After each disaster, when EM loans are made available, State Directors are *required* to promptly contact the FCIC Field Operations Office Director to review the Memorandum of Understanding and agree on how each agency will fulfill its responsibilities in dealing with the disaster situation.

(d) *Notification to County Offices.* State Directors *will* provide instructions for actions to be taken by County Supervisors in maintaining a good relationship with FCIC Insurance Representatives.

**§ 1945.28 Relationship between ASCS and FmHA.**

Exhibit A of Subpart JJ Part 2000 (a copy of which is available in any FmHA office) is a Memorandum of Understanding between ASCS and FmHA. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the ASCS and the FmHA by coordinating certain ASCS disaster programs with the FmHA EM loan program. It specifically identifies the administrative responsibilities of FmHA County Supervisors and ASCS County Executive Directors concerning disaster benefits.

**§ 1945.29 [Reserved]**

**§ 1945.30 FmHA Emergency Loan Support Teams (ELST).**

(a) *Use of ELSTs.* ELSTs are to be used when a disaster warrants immediate attention by FmHA in implementing the EM loan program. Also, ELSTs are used when unusually large numbers of EM loan applications are received and personnel from other areas are required to be temporarily assigned to assist in rendering prompt service to the affected area(s).

(b) State Office ELST. Each State Director shall form an ELST to be deployed, when needed, in areas affected by a major disaster, Presidential emergency, or a natural disaster. ELSTs shall assist the State Directors in expediting the making of EM loans to disaster victims.

(1) State Directors shall use the ELSTs formed in their State(s) and all other FmHA personnel within their State(s), as the need arises, in making EM loans. If additional help is needed beyond that available in the State, including the use

of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request outside assistance.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing ELSTs from other States to assist in the making of EM loans.

(3) State ELSTs will consist of a team leader and team members, selected by the State Director.

(i) The State ELST can include Farmer Programs Specialists, County and Assistant County Supervisors. Program Review Assistants, County Office Assistants, and County Office Clerks.

(ii) So that no one person or County Office unit bears an unfair burden, State team members will be changed from time to time.

(iii) Team members will provide training in EM loan making and EM loan servicing to all County Office employees.

(iv) District Directors are responsible for notifying the State Director of any need to change a team member within their district.

(4) State ELSTs will be trained as follows:

(i) The National Office will hold training meetings or workshops for ELST leaders as needed; and

(ii) State ELST leaders will be responsible for training and keeping the State team and all other State personnel currently informed on all phases of EM loans.

(5) State Directors will issue a State supplement establishing an ELST for the State(s) under their jurisdiction. This supplement will name the team leader and all members. A copy of this supplement will be sent to the National Office, Attention: Director, Emergency Division.

(c) *National Office ELST leaders.* The National Office has established a cadre of ELST team leaders.

(1) National Office team leaders will be used as follows:

(i) Training of FmHA field personnel, other USDA personnel, and temporary personnel in the making of EM loans;

(ii) Assisting State Directors in the organizing and expediting of assistance to eligible disaster victims; and

(iii) Leading ELSTs in areas with an unusually large volume of EM loan applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of EM loan processing activities.

**§ 1945.31 FmHA Emergency Loan Assessment Teams (ELAT).**

The State Director will deploy ELATs on a continuing basis to the designated areas to monitor EM loan processing activities in order to minimize loan errors, especially in loss calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and auditors from the Office of Inspector General, if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Office. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure and will forward a copy of the ELAT team leader's report to the Administrator, Attention: Emergency Division.

**§ 1945.32–1945.34 [Reserved]**

**§ 1945.35 Special EM loan training.**

(a) *General.* When it is evident that a large number of farmers were affected by a widespread disaster in a State, the National Office will send a qualified representative(s) from the Emergency Division to the State to assist the State Director in conducting a training meeting(s) with State, District and County employees, provided there has not been a recent training meeting in that State.

(b) *Purpose.* A good training program is a must in disaster areas. This program should adequately instruct State and County Office personnel so that when the training is completed they will be well qualified to process EM loans without undue delay. The training meeting will last two days (16 hours) and include a workshop and a test.

(c) *Objective.* The basic objective of this training program is to keep State and County personnel properly trained in the current methods of processing EM loan applications and EM loan making. This will result in more expeditious service to disaster victims during critical times and minimize erroneous interpretations of regulations by FmHA employees in administering the EM loan program.

(d) *Comprehensive EM loan training package.* A comprehensive EM loan training package has been developed for use by National Office and State Office Personnel in training all EM loan writers (both regular and temporary employees). This package, including an application kit, will be used for the EM loan training meetings, and any subsequent EM loan training meetings conducted by State or District personnel.

(e) *Funding.* Travel for the two-day session required in paragraph (b) of this section may be funded from a special purpose account with advance approval from the Budget Division. The following information must be provided to the Budget Division when a request is made for these additional travel funds:

(1) Number of sessions.

(2) Categories, by number, of personnel attending each session.

(3) Estimated cost per session.

**§ 1945.36–1945.44 [Reserved]**

**§ 1945.45 Public information function.**

A good public information program is a must in disaster areas. This program should inform farmers and the general public when and where EM loans are available. Also, the information will state the EM loan objectives, eligibility requirements, and type of assistance available. Public information functions will be performed according to Exhibit A of FmHA Instruction 2015–A (available in any FmHA office).

**§ 1945.46–1945.50 [Reserved]**

## Subpart D—Emergency Loan Policies, Procedures, and Authorizations

81. Sections 1945.151 through 1945.200 are revised to read as follows:

## Subpart D—Emergency Loan Policies, Procedures, and Authorizations

Sec.

1945.151 Introduction.
1945.152 Program objectives.
1945.153 Loans for citrus grove rehabilitation or reestablishment.
1945.154 Definitions and abbreviations.
1945.155 Relationship between FmHA and other federal agencies.
1945.156 The test for credit and certification requirements for availability of credit elsewhere.
1945.157–1945.160 [Reserved]
1945.161 Receiving and processing applications.
1945.162 Eligibility requirements.
1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.
1945.164–1945.165 [Reserved].
1945.166 Loan purposes.

Sec.
1945.167 Loan limitations and special provisions.
1945.168 Rates and terms.
1945.169 Security requirements.
1945.170–1945.172 [Reserved]
1945.173 General provisions—compliance requirements.
1945.174 [Reserved]
1945.175 Options, planning, and appraisals.
1945.176–1945.179 [Reserved]
1945.180 County Committee certification.
1945.181 [Reserved]
1945.182 Loan docket preparation.
1945.183 Loan approval or disapproval.
1945.184 EM loans to FmHA employees.
1945.185 Actions after loan approval.
1945.186–1945.187 [Reserved]
1945.188 Chattel lien search.
1945.189 Loan closing.
1945.190 Revision of the use of EM loan funds.
1945.191 [Reserved]
1945.192 Loan servicing.
1945.193–1945.199 [Reserved]
1945.200 OMB control number.

## Subpart D—Emergency Loan Policies, Procedures, and Authorizations

### § 1945.151 Introduction.

(a) *Policy.* This subpart prescribes the policies, procedures, and authorizations of the Farmers Home Administration (FmHA) for making insured emergency (EM) loans to farmers, ranchers, and aquaculture operators (hereinafter referred to as farmers), as provided by law. FmHA's policy is to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract). These regulations apply to applicants/borrowers and FmHA personnel involved in making EM loans.

(b) *Program administration.* The County Supervisor is the local contact person for application processing, loan making, and loan servicing activities.

### § 1945.152 Program objectives.

The objective of EM loans is to provide financial assistance to cover actual losses sustained by eligible farmers, so that they can return to normal farming operations after sustaining substantial losses as a result of a declared/designated disaster. EM loans are made to assist eligible disaster farm victims rehabilitate and resume their normal operations. This objective will be accomplished through the extension of credit and such supervisory assistance as is determined necessary to achieve the objectives of the loan and protect the Government's interest. Supervisory assistance will be given in accordance with the provisions of Subpart B of Part 1924 of this chapter. The borrower has the responsibility of achieving the objectives of the loan. The borrower accomplishes this by repaying the loan according to the planned repayment schedule, maintaining FmHA security, using loan funds for planned purposes only and following a plan of operation agreed upon with FmHA.

### § 1945.153 Loans for citrus grove rehabilitation or reestablishment.

Exhibit D of this subpart, which deals with loans made to operators of citrus groves, modifies some of the provisions contained in this subpart.

### § 1945.154 Definitions and abbreviations.

(a) *Definitions*—(1) *Applicant.* The person or entity conducting the farming operation at the time of the disaster and making a request for EM loan assistance from FmHA.

(2) *Approval official.* An FmHA official who has been delegated loan approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office (see FmHA Instruction 1901-A, Exhibit C).

(3) *Aquaculture.* The husbandry of aquatic organisms in a controlled or selected environment. Aquatic organisms are fish (the term "fish" includes any aquatic gilled animal commonly known as "fish," as well as mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a written permit or lease issued to the applicant and the permit or lease must specifically identify the waters to be used solely by the applicant.

(4) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

(5) *Calendar year.* The 12-month period beginning January 1 and ending December 31 of any given year.

(6) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

(7) *Corporation.* For the purpose of this subpart, a private domestic corporation recognized as a corporation and authorized to carry on farming, ranching, or aquaculture operations under the laws of the State(s) in which the entity will operate a farm(s).

(8) *Eligible area.* A county or similar political subdivision in which EM loans are made available.

(9) *Established farmer.* A tenant-operator or owner-operator of a family farm who was actively participating in the operation and management of a farming operation at the time of the disaster, spends a substantial portion of time in carrying out the farming operation, and had planted a crop or had purchased livestock which were on the farm at the time of the disaster. In the case of an individual loan applicant, the term "primarily and directly engaged in agricultural production" means that the applicant derives more than 50 percent of the gross income from the applicant's own agricultural production. In the case of a cooperative, corporation, partnership, or joint operation, the term means that the entity derives more than 50 percent of its gross income from agricultural production and the member(s), shareholder(s), partner(s) or joint operator(s) owning or controlling a majority interest in such cooperative, corporation, partnership or joint operation derive more than 50 percent of their gross income from the cooperative's, corporation's, partnership's or joint operation's agricultural production. The gross farm income figures will be taken from the proposed annual plan or farm budget that will cover the next projected 12-month period (or crop year).

(10) *Family farm.* A farm or ranch as defined in § 1941.4 of Subpart A of Part 1941 of this chapter.

(11) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which are used or will be used in the production of crops or livestock and meet the requirements of paragraph (a)(10) of this section. This includes aquaculture operations which meet the requirements set forth in paragraph (a)(3) of this section and includes nonfarm operations which meet the requirements set forth in paragraph (a)(23) of this section. It also includes a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

(12) *Farm and home plan.* For the purpose of this regulation, any reference to farm and home plan(s) means any farm planning and/or recordkeeping

system(s) acceptable to the loan approval official. This includes but is not limited to: Form FmHA 431–2, "Farm and Home Plan;" farm budgets; State University Computerized Farm Planning Systems; etc.

(13) *Farming enterprise.* The business of producing and marketing crops, livestock, livestock products, and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials.

(i) *Single enterprise.* An enterprise which constitutes an integral part of an applicant's total farming operation. Some crops such as corn may be produced as a cash or feed crop. In such cases, the actual acres produced for each purpose for the best 4 of the past 5 years will be used in determining losses for each single enterprise. The following are examples of single enterprises:

(A) All cash field crops;

(B) All cash vegetable crops;

(C) All cash fruit and nut crops;

(D) All feed crops fed to applicant's own livestock. A livestock enterprise must be a basic part of the farming operation in order for feed crops to be considered as a basic enterprise in determining eligibility based on production losses to feed crops;

(E) Beef operations;

(F) Dairy operations;

(G) Hog operations;

(H) Poultry operations;

(I) Aquaculture operations; and

(J) All other operations (*i.e.,* trees grown for timber, etc.)

(ii) *Basic part of a farming operation.* Any single enterprise which normally generates sufficient income to be considered essential to the success of the total family farming operation.

(14) *Fixture.* Generally, an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself.

(15) *Hazard insurance.* Includes coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that which is required by law.

(16) *Household contents.* The essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, etc. Exclude all luxury items including jewelry, furs, antiques, paintings, etc.

(17) *Incidence period.* The specific date(s) during which a disaster occurred.

(18) *Insured loan.* A loan made directly by FmHA as lender from the Agricultural Credit Insurance Fund, and serviced by FmHA personnel.

(19) *Irregular payment schedule.* To schedule the payment of interest in part and/or principal in whole or in part.

(20) *Joint operation.* Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

(21) *Majority or controlling interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership, or joint farming operation.

(22) *Market value.* The amount which a willing buyer would pay a willing, but not forced, seller in a completely voluntary sale.

(23) *Nonfarm enterprise.* Any business enterprise, other than farming, but including recreation, which provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

(24) *Normal year's production.* The normal year's production is the average per acre yield or production per/animal unit of the 4 better years out of the 5 years immediately preceding the disaster year.

(25) *Partnership.* An entity consisting of individuals who have agreed to operate a farm. The entity must:

(i) Be recognized as a partnership by the laws of the State(s) in which the entity will operate a family farm;

(ii) Be authorized to own real and/or personal property;

(iii) Be able to incur debts in its own name.

(26) *Physical loss.* Damages to or destruction of physical property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock; livestock products; harvested crops; supplies; and growing crops and pasture which will be replanted/reestablished. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

(27) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A positive cash flow must show that a borrower will at least be able to:

(i) Pay all operating expenses and taxes and have a reserve for tax liability.

(ii) Meet scheduled payments on all debts including any required payments on open accounts and on carryover debts.

(iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses, such as providing for expenses for major repairs.

(iv) Have a reasonable standard of living for the individual borrower or the farm operator in the case of a corporation, cooperative, partnership, or joint operation.

(v) Provide for any essential capital purchases or improvements. Usually it is necessary to plan for a capital expenditures reserve which reflects the depreciating value of the property that will have to be replaced.

(28) *Production loss.* The reduction in normal production, directly attributable to the natural disaster, of yield per acre and/or quality of crops produced, of quantity and/or quality of livestock products produced per animal unit, and of weight gain and/or natural increase in numbers of livestock units. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

(29) *Qualifying disaster.* A major disaster, Presidential Emergency, or natural disaster as defined in Subpart A of Part 1945 of this chapter.

(30) *Qualifying physical loss.* A loss caused by damage to or destruction of physical property that is essential to the successful operation of the farm, and if it is not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis.

(31) *Qualifying production loss.* The production loss an applicant sustained from the disaster that is equivalent to at least a 30 percent loss of normal per acre or per animal production in any single enterprise which is a basic part of

the total farming operation. Losses of livestock increases, *e.g.*, calves, pigs, etc., are considered production losses, *except* when live animals are destroyed. When an animal is killed, lost or sold because of injury or reduced production potential is caused by the disaster, it is considered a physical loss. Reductions in the production of livestock, livestock products or reductions in weight gains of animals, due to homegrown feed crop and/or pasture losses, will not be considered production losses when replacement feed is available to purchase, regardless of the cost of that feed (normally production losses to livestock enterprises will be based on feed crop and pasture losses). When the disaster has severely disrupted the usual feeding schedule of a livestock enterprise because of extended utility failure or inaccessability to the livestock, losses in production of milk, eggs, weight losses, etc., may be considered as production losses. Production losses will be calculated based on the reduction from normal which occurs during the disruption period and the period needed to bring production back up to the normal level.

(32) *Related by blood or marriage.* As used in this subpart, individuals who are related to one another as husband, wife, parent, child, brother or sister.

(33) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term "security."

(34) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(35) *Subsequent loans.* Any EM loans processed by the Finance Office after it processed the first EM loan to a borrower. The disaster designation number is not considered in determining whether an EM loan is a subsequent loan.

(36) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted. For both physical and production losses, the termination date is 8 months from the date of the disaster declaration/determination/ notification.

(b) *Abbreviations.* The following abbreviations are used in this subpart:

(1) ASCS—Agricultural Stabilization and Conservation Service.

(2) *ECP*—Emergency Conservation Program.

(3) *EFP*—Emergency Feed Program.

(4) *EM*—Emergency Loans.

(5) *FCIC*—Federal Crop Insurance Corporation.

(6) *FEMA*—Federal Emergency Management Agency.

(7) *FIA*—Federal Insurance Administration.

(8) *FmHA*—Farmers Home Administration.

(9) *FMI*—Forms Manual Insert.

(10) *INS*—Immigration and Naturalization Service.

(11) *OGC*—Office of the General Counsel.

(12) *SBA*—Small Business Administration.

(13) *UCC*—Uniform Commercial Code.

(14) *USDA*—United States Department of Agriculture.

**§ 1945.155 Relationship between FmHA and other federal agencies.**

(a) *SBA and FmHA.* A Memorandum of Understanding between the SBA and USDA–FmHA pertaining to disaster loan assistance is attached as Exhibit B.

(b) *ASCS and FmHA.* A Memorandum of Understanding between the ASCS and FmHA on disaster assistance pertaining to the exchange of information essential to the elimination of duplicate compensatory benefits from the two participating Agencies for the same disaster losses is Exhibit A of FmHA Instruction 2000–JJ (available in any FmHA office).

(c) *FCIC and FmHA.* A Memorandum of Understanding between the FCIC and FmHA pertaining to crop insurance and exchanging information essential to the elimination of duplication of disaster compensatory benefits is Exhibit A of FmHA Instruction 2000–N (available in any FmHA office)

**§ 1945.156 The test for credit and certification requirements for availability of credit elsewhere.**

(a) *Applicants who certify that other credit is available.* Applicants applying for EM loan assistance who certify they are *able* to obtain sufficient and suitable credit elsewhere to meet their actual farming and family living needs are not eligible for such assistance.

(b) *Applicants who certify that other credit is NOT available.* Applicants who certify they are *not able* to obtain sufficient credit elsewhere to meet their actual farming and family living needs must meet the requirements set out in § 1945.156(b).

(1) *Test for credit for individuals and entities.* Applicants must be *unable* to obtain sufficient and suitable credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. If the applicant has been getting credit away from the local community where the farming operation is located, such source(s) of credit must also be contacted and considered. The applicant's equity in *all assets,* including, but not limited to, real estate, chattels, stocks, bonds, and Certificates of Deposit will be considered in determining the applicant's ability to obtain such credit from other sources. Also, the applicant must offer to pledge *all assets* as security when requesting credit from other lenders. Cooperatives, corporations, partnerships and joint farming operations and the members, stockholders, partners and joint operators, both individually and collectively, must be unable to provide the required financing from their own resources or with credit obtained from pledging those resources to other lenders. Form FmHA 1940–38, "Request for Lender's Verification of Loan Application," must be completed (with particular attention that Item 2A is completed) and filed in the applicant's County Office case folder, and any additional facts concerning the findings, *in all cases,* must be documented and recorded in the running case record.

(2) *Test for credit certification requirements.* Applicants will certify in writing on the application form, and the County Supervisor *shall* make the determination whether or not adequate and suitable credit is available elsewhere to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. The County Supervisor will consider all such information obtained from other lenders in making the determination, but is required to make an independent decision concerning the applicant's ability to obtain the needed credit elsewhere. Should the County Supervisor determine that the applicant *can* obtain the necessary credit elsewhere to meet actual needs, the applicant will be notified, in writing, that the applicant is *not* eligible for an EM loan(s).

(i) For applicants whose total EM loan(s) request is for $300,000 or less, the following actions will be taken:

(A) Applicants will be required to apply for the credit needed from their normal lender(s) and, if their normal lender(s) is located outside the local community, from at least one

agricultural lender in the local community, to determine whether such lender(s) will provide the credit. Form(s) FmHA 1940–38 must be completed by all lending sources contacted, unless an exception is made under the provisions of paragraph (b)(2)(i)(C) of this section. Only when the applicant is not able to obtain a loan, from one or more of the lending sources contacted, will the applicant be considered for an EM loan. If the County Supervisor believes it necessary, the action required in paragraph (b)(2)(ii) of this section will be taken.

(B) When the County Supervisor receives letters or other written evidence, including Form FmHA 1940–38, from a lender(s) indicating that the applicant is unable to obtain satisfactory credit from that source(s), such correspondence will be included in the loan docket.

(C) If it appears from a review of the application that it would be unduly burdensome for the applicant to obtain written declinations of credit from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor is familiar enough with other lenders' farm loan programs to determine that no possibility exists for the applicant to obtain the credit needed from those lenders. When this conclusion is reached, the basis for it will be recorded in the running case record, and further checks will not be necessary. However, when this exception is used, the applicant's normal lender(s) *must be contacted in all cases* and the results of that contact(s) must be well documented in the running case record.

(ii) For applicants whose total EM loan(s) request is for more than $300,000, the following actions will be taken:

(A) Applicants will be required to apply at not fewer than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. In addition, when an applicant has a net worth of $1 million or more and produces evidence that the necessary credit cannot be obtained in the local community, the applicant will be required to contact at least two other lending sources outside the local area. One or more of those lenders contacted must be the applicant's normal lender(s).

(B) Form FmHA 1940–38 must be completed by all lending sources contacted, returned to the County Office and handled in accordance with paragraph (b)(2)(i)(B) of this section.

(C) When the County Supervisor receives Form FmHA 1940–38 indicating that the applicant is unable to obtain satisfactory credit, the forms will be placed in the loan docket. However, such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

(3) *Use of nonessential assets (both farm and nonfarm) when seeking other credit.* When an EM loan(s) will be made, after other lenders have declined to provide needed credit to the applicant, the County Supervisor *will*, as a condition of loan approval, require the applicant and the owner(s) of the applicant entity to list all assets (both essential and nonessential) setting forth: why those assets and any income derived from them are needed; and how such assets and the income derived from them will be used for essential family living expenses and for maintaining a sound family farming operation(s). The loan approval official must determine that the applicant's plan for use of *all* assets and the income derived therefrom is acceptable; and the loan approval official *will* require the applicant and the owner(s) to mortgage and/or assign their interest in all assets to FmHA. Any assets not contributing to essential family living expenses and maintenance of a sound family farming operation *will* be considered nonessential; and the applicant and the owner(s) must, as a condition of loan approval, agree to sell the nonessential assets. The proceeds from such sale(s) *will* be used to reduce the amount of EM loan(s) requested, provided the assets can be sold prior to the EM loan(s) closing. If the nonessential asset(s) cannot be sold before loan(s) closing, the ownership interest in those assets *will* be mortgaged and/or assigned to FmHA; and a written agreement prepared and executed, in a manner approved by the OGC, to sell those assets at their present market value, within a specified period not to exceed one year from the date of loan(s) closing. The proceeds from the sale of such assets will be applied as an extra payment on the FmHA loan carrying the lowest interest rate, which is secured by the asset(s) sold.

**§§ 1945.157—1945.160 [Reserved]**

**§ 1945.161 Receiving and processing applications.**

(a) *Applications.* Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

(1) Applications for initial EM loans for each disaster will be received only in areas where EM loans are made available in accordance with Subpart A of Part 1945 of this chapter, and must be postmarked or received in the County Office before the specified 8-month termination date has passed. *These applications must be processed within twelve months after they are filed.*

(2) An applicant conducting a family farming operation in different counties or locations will be considered for only one application, and will file that application in the county in which the farm headquarters is located, unless determined otherwise by the State Director. When the operation is located in more than one State, the State Directors involved will consult and determine which State will process the application and service the loan(s).

(3) Applications may be received and processed from FmHA EM loan borrowers or SBA disaster loan borrowers for that portion of the maximum EM loan originally authorized, but not requested initially from FmHA or SBA, provided the application is *received within 8 months of the disaster declaration/determination/notification date.*

(4) Applicants who are determined to be *ineligible* for an EM loan may be considered for other types of FmHA farm loans, when appropriate.

(b) *Statement of losses.* Applicant's statements of loss or damage will be obtained in support of their applications by having them complete Form FmHA 1945–22, "Certification of Disaster Losses."

(c) *ASCS verification of farm acreages, production and benefits.* From information obtained on Form FmHA 1945–22, the County Supervisor will send a separate Form FmHA 1945–29, "ASCS Verification of Farm Acreages, Production and Benefits," to the appropriate ASCS County Office for verification of ASCS registered farm(s) that the applicant has certified constituted part of the disaster year's operation. ASCS records of acres of crops planted/grown in the disaster year, actual (proven) yields in the disaster year, ASCS established yields for the disaster year, ASCS emergency payments and the other information requested on that form must be obtained. The use of Form FmHA 1945–29 is optional for EM loans made for physical losses. It is required for EM loans made for production losses on crops covered by ASCS programs.

(d) *Evidence of operation.* If the applicant is a cooperative, corporation, partnership, or joint operation, it will provide evidence that it was operating as a cooperative, corporation, joint

operation or partnership at the time the disaster loss occurred, or has changed its form in accordance with § 1945.162(1) of this subpart, after the loss occurred.

**§ 1945.162 Eligibility requirements.**

(a) *Test for credit.* Applicants must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(b) *Citizenship.*

(1) An individual applicant must be a citizen of the United States (see § 1945.154 (a) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District Office. (See Exhibit B of Subpart A of Part 1944 of this chapter.) The completed form will be mailed to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) More than a 50 percent interest in the cooperative, corporation, partnership or joint operation must be owned by United States citizens (see § 1945.154 (a) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act.

(c) *Established farmer.* An applicant must be an established farmer (as defined in § 1945.154 (a) of this subpart). An applicant who conducts the farming operation as an individual must manage the farming operation. At least one stockholder, member, partner or joint operator of an entity applicant must manage the farming operation. One who does not devote full time to the farming operation may be considered the manager provided that person visits the farm at sufficiently frequent intervals to exercise control over the farming operation, makes decisions and gives directions on how the operation(s) should be run, and sees that the operation is being carried on properly. Any applicant that employs an outside full-time hired manager or management service does not qualify as an established farmer, regardless of the number of visits made by the individual applicant or the members, stockholders, partners or joint operators.

(1) An estate or trust; a corporation with over 50 percent of the ownership held by an estate, trust, another corporation, a partnership or a joint operation; a partnership or joint operation with over 50 percent of the ownership held by an estate, trust, corporation, another partnership or another joint operation is not considered to be an established farmer for EM loan purposes.

(2) Integrated livestock, poultry, and fish processors who operate primarily and directly as commercial businesses through contracts or business arrangements with farmers are not considered to be established farmers and are not eligible. However, a grower under contract with an integrator or processor is considered an established farmer even though the applicant operates through a contract arrangement with an integrated processor, provided the operation is not managed by an outside full-time hired manager or management service. Farmers operating through contract may be considered for EM loans for physical losses and production losses. However, eligibility for and the amount of their production losses will be determined from the applicant's share of the agricultural production as set forth in the contract.

(d) *Operate in a disaster area.* An applicant for an EM loan must have sustained qualifying losses in an area in which the availability of EM loans for actual losses has been determined in accordance with Subpart A of Part 1945 of this chapter; and must have filed an application before the expiration of the termination date. When an applicant's farming operation is located both in a designated county(ies) and a non-designated county(ies) refer to § 1945.163(a)(2)(xx) of this subpart.

(e) *Losses.* An applicant must have suffered qualifying production and/or physical losses to be eligible for an EM loan. Production losses must be to property in which the applicant has an ownership interest or interest in which a security interest can be obtained. Physical losses must be to property in which the applicant has an ownership interest. See § 1945.163 of this subpart for the methods of determining qualifying losses.

(f) *Legal capacity.* An applicant must possess the legal capacity to contract for the loan.

(g) *Training and experience.* An applicant must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation and have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(h) *Honestly endeavor.* The applicant will honestly endeavor to carry out the undertakings and obligations required of the applicant in connection with the loan.

(i) *Family farm.* The applicant's farm must be a family farm as defined in § 1941.4 of Subpart A of Part 1941 of this chapter. If the applicant was conducting larger than a family farm at the time of the disaster but will be conducting a family farm at the time an EM loan is closed, the applicant meets this eligibility requirement.

(j) *Intent to continue farming.* An applicant must show an intent to continue the operation after the disaster. Those applicants who were required to stop temporarily because of the disaster loss or damage to their operations but intend to continue farming with EM loan assistance meet this requirement.

(k) *EM loan(s) to cooperatives, corporations, joint operations or partnerships.* When an EM loan is made to a cooperative, corporation, partnership or joint operation, only one initial EM loan can be made to the entity constituting the farming operation to cover the losses per disaster. However, an individual member, stockholder, partner, or joint operator may qualify for a separate EM loan to cover losses to a *separate farming operation* which the applicant conducts as an individual on a different farm tract.

(1) If the members, stockholders, partners or joint operators holding a majority interest *are related* by blood or marriage, at least one member, stockholder, partner or joint operator must operate the family farm.

(2) If the members, stockholders, partners or joint operators holding a majority interest *are not related* by blood or marriage, the majority interest holders must operate the family farm.

(3) If an entity applicant has an operator interest in any other farming operation, that farming operation must be no larger than a family farm.

(l) *Change in the form of an applicant.* A change in the form of an applicant between the time of a qualifying loss and the time an EM loan is closed does *not* make the applicant ineligible for EM loan assistance. (Examples of changes in form are as follows: An entity may split into its individual members or into more than one entity; one or more individuals may leave an entity; an individual may incorporate; a partnership may become a joint operation, a corporation, a cooperative, or another partnership; a corporation may become a partnership, a joint operation, a cooperative, or another corporation; a cooperative may become a joint operation, a partnership, a corporation, or another cooperative; a joint operation may become a partnership, a corporation, a cooperative or another joint operation.) Such an applicant is eligible for EM loan assistance subject to all of the following limitations and qualifications:

(1) The applicant must meet all FmHA eligibility requirements at the time of loan closing.

(2) The applicant must *not* conduct an operation larger than the operation that was being conducted at the time of the disaster.

(3) In the case of an entity applicant, all of the individuals who have an interest in the entity must have had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster and/or must be heirs of those who had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster. Heirs must have been participating in the operation at the time the disaster occurred and must be engaged in the farming operation at the time of loan approval.

(4) In the case of an individual applicant, that person must have had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster and/or must be an heir of those who had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster. An heir has to have been participating in the operation at the time the disaster occurred and has to be engaged in the farming operation at the time of loan approval.

(5) To determine the amount of an actual loss loan an applicant may receive, first calculate the actual loss suffered by the operation(s) as it existed at the time of the disaster, in accordance with § 1945.163 of this subpart. Then look at the individual applicant *or* the individual members, stockholders, partners or joint operators of an entity applicant and determine each person's percentage of ownership interest (or interest in which a security interest could be obtained) in the operation as it existed at the time of the disaster. For an entity applicant, add the percentages of all owners who had an interest in the entity that suffered the disaster losses. Multiply the actual loss suffered by the operation as it existed at the time of the disaster by this percentage figure; the result is the amount of actual loss loan the applicant may receive. For example, if one partner withdraws from a four-partner partnership (each person owning a 25% interest), the remaining three partners are eligible for 75 percent of the actual loss suffered by the operation as it existed at the time of the disaster.

(m) *EM loan assistance to an FmHA employee or a member(s) of the family of an employee.* See § 1945.184 of this subpart.

**§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.**

Disaster losses will be reported by applicants on Form FmHA 1945–22, "Certification of Disaster Losses," which states the physical and production losses suffered as a result of the declared/designated disaster. The applicant will report, on Form FmHA 1945–22, total acres and actual yields for *all* crops planted and/or grown in the disaster year, and the number of *all* animal units and production per animal unit being maintained at the time of the disaster. This information will come from the applicant's own records or from ASCS records of acres grown and proven actual yields in the disaster year. Applicants will also report their previous 5-year production levels as set forth in paragraph (a) of this section. This form will be completed and submitted to the County Office with the application, as soon as the losses and/or damages can be accurately assessed. The information provided by applicants on Form FmHA 1945–22 will be the primary basis for FmHA's calculation of qualifying losses, eligibility for EM loan(s) based on production losses, and an applicant's maximum amount of EM loan eligibility. Therefore, applicants are required to certify, subject to penalties of law, that the accuracy and completeness of the information provided on Form FmHA 1945–22 can be supported by written records. Applicants will be asked to identify on that form any single farming enterprise they consider basic to the success of their total farming operation, and in which they have suffered a disaster loss. When an applicant's certified production loss claims seem unreasonable, they *will* be verified and the findings documented. Physical loss claims will be verified by requiring the applicant to furnish evidence of ownership and proof of the property loss or damage. Proof of ownership could be by deeds, mortgages, financial statements, insurance policies, and the like. Proof of the loss or damage could be by the applicant's own pictures, written certification by other persons or, when practical, by visual inspections by FmHA employees.

(a) *Production losses.* (1) The normal year's production will be established by eliminating the poorest year of the 5-year production history immediately preceding the disaster year and averaging the remaining 4 years' production. The applicant *must* select the year to be eliminated. The year selected to be eliminated *must* be the same year for all farm enterprises (i.e. *all* crops, livestock, and livestock products), which constituted a part of the applicant's farming operation during that year. A State supplement will be issued which will be used in connection with paragraph (a)(1)(iii) of this section. The State supplement will contain average production figures provided by the USDA State Crop and Livestock Reporting Service, when available. If those records are not available, the State supplement will contain statistical data on production from similar State or Federal bodies. When this information is available by county, county averages will be used. If available only by State, the State averages will be used throughout the State. In those States where neither a County nor State average is available for an agricultural commodity(ies), the State Director, with the advice of representatives of other Federal and State agricultural agencies, will establish County or State averages and advise County Offices of these averages in the State supplement. State Directors and Farmer Programs Chiefs in adjoining States will consult with each other before releasing these figures. Applicants will identify, on Form FmHA 1945–22, the production record source(s) to be used in determining the normal year's production for each commodity that was produced on all farms operated by the applicant in the disaster year. Applicants must use the production record source(s) for each crop in the order of priority as follows:

(i) *The applicant's actual reliable farm records or ASCS "actual yields,"* for those years for which they are available. When the ASCS "actual yields" are used, they will be documented on Form FmHA 1945–29. If

actual yields are not available for all of the 5 crop year(s), the applicant will first use a combination of actual records which are available and the ASCS established yield(s) for the disaster year, as specified in subparagraph (ii). If ASCS established yields are not available for the disaster year, then the applicant will use a combination of actual records which are available and County or State averages, as specified in subparagraph (iii).

(ii) *The ASCS "established yields."* When this production record source is used, the applicant must obtain the information from ASCS and submit it with the application to FmHA. The disaster year established yield, as provided by ASCS for any given crop, will be used as the yield for those years for which actual yields are not available and combined with actual yields to determine the normal year's yields. When there are no actual yields available for any of the 5 years, and there is an ASCS established yield available for the disaster year, the established yield will be considered as the normal year's yield, without any calculations. This production record source will be used only for those years and those commodities for which the applicant's or ASCS's actual yields are not available.

(iii) *The County or State average yields.* These average yields will be found in the State supplement mentioned in paragraph (a)(1) of this section. This production record source will be used only for those commodities and those years for which neither the applicant's reliable farm records nor ASCS actual or established yields are available. Only when there are no "actual yields" or "established yields" available will County or State average yields be used. However, County or State average yields may be combined with actual yields when established yields are not available, but County or State average yields will not be combined with established yields when established yields are available for the disaster year.

(iv) When an applicant's production loss is on land being developed and maximum production capacity has not been attained, the State Director will establish normal yields on a case-by-case basis.

(2) FmHA loan official(s) will complete Form FmHA 1945–26, "Calculation of Actual Losses."

(i) In calculating production losses, the same established unit prices will be used for the disaster year and the normal year in computing the dollar value of each enterprise. Unit prices will be established in accordance with paragraph (a)(2)(iv) of this section. In the production loss calculation, those crop production yields and production per animal unit records authorized in paragraphs (a)(1) (i), (ii) and (iii) of this section will be used.

(ii) Information certified on Form FmHA 1945–22 for the disaster year for all single enterprises (as defined in § 1945.154(a)(13)(i) of this subpart), which suffered a loss due to the disaster, will be transposed from Form FmHA 1945–22 to the appropriate places on Form FmHA 1945–26. The FmHA official completing Form FmHA 1945–26 is responsible for verifying loss information provided by the applicant. Information obtained from ASCS on Form FmHA 1945–29 will be cross checked with information provided by the applicant on Form FmHA 1945–22. Whenever there is a discrepancy between an applicant's acreage and/or yield information provided on Form FmHA 1945–22, by the applicant, and the information provided by ASCS on Form FmHA 1945–29, the applicant will be told about the discrepancy and the applicant and the County Supervisor will complete Form FmHA 1945–22 so that it accurately reflects the applicant's average and yield.

(iii) When the applicant's disaster loss is due to a reduction in *quality* with or without a quantity loss, rather than a reduction in *quantity* only, the applicant will be given credit for quality loss by adjusting the actual production yield downward. This will be accomplished by converting the dollar value of the quality loss to a yield reduction equal in value to the quality loss. When a quality adjustment is necessary, the basis used in making the adjustment will be the applicant's *accurate* records of production and sales receipts showing the actual price received and the grade of the commodity for the five years immediately preceding the disaster year. The normal year's quality will be established by eliminating the poorest of the five-year record. The applicant must select the year to be eliminated. The burden of providing this information rests with the applicant.

*EXAMPLE I:* A farmer has acccurate records indicating that the farmer's normal year's production of corn is 100 bushels per acre of No. 2 corn. Due to flooding after the ears were set and mature, the corn was coated with a filmy residue. This resulted in the quality grade being reduced from No. 2 to No. 3. The commodity price established for No. 2 yellow corn was $3.00 per bushel. The farmer, due entirely to a *reduction in quality*, received $1.50 per bushel. Therefore, when computing the disaster loss, the *quantity* produced would be reduced by 50% to reflect the *quality* loss.

| | Established criteria | Disaster year actuals |
|---|---|---|
| Yield | 100 bu/acre | 100 bu/acre. |
| Grade quality. | No. 2 yellow corn. | No. 3 yellow corn. |
| Established price per bushel. | $3.00 | $1.50 (actual received). |

$$\frac{\text{Price per unit disaster year ($1.50)}}{\text{Price per unit normal year ($3.00)}} = \text{Quality reduction (.5 or 50%)}$$

Quality reduction × disaster year actual production = quality (for loss calculation)
.5 × 100 bushels per acre = 50 bushels per acre
50 bushels per acre will be entered on Form FmHA 1945–26 as the disaster year yield to reflect the quality reduction.

EXAMPLE II: A cotton farmer usually produces No. 2 cotton. In the disaster year, the farmer produced No. 3 cotton and this quality loss resulted in a grade reduction amounting to a dockage of $100.00 per bale (550 lbs.). The farmer's ASCS established yield is 550 lbs. per acre. The farmer produced 600 lbs. per acre in the disaster year. The established price for cotton for the disaster year is $330.00 per bale (.60 cents per pound).

| | Established criteria | Disaster year actuals |
|---|---|---|
| Yield (lbs. per acre) | 550 | 600 |
| Grade | 2 | 3 |
| Price per bale | $330.00 | $230.00 |

$$\frac{230}{330} = .70$$

(.70 × 600 = 420 lbs. per acre)

420 lbs. per acre would be entered on FmHA Form 1945–26 as the disaster year yield to reflect the quality reduction.

In this example the farmer would not be eligible for an EM loss loan since the farmer suffered only a 24 percent loss.

$$\frac{420 \text{ lbs./acre}}{550 \text{ lbs./acre}} = 76\%$$

The calculations used for a quantity reduction due to quality losses must be documented on Form FmHA 1945–26 or on an attachment to that form.

(iv) The gross dollar value of production losses will be computed for all crops and all livestock enterprises, which were a part of any single enterprise that suffered losses due to the disaster, by calculating the value of the disaster year's production and subtracting that amount from the calculated value of the normal year's production. Unit prices for all agricultural commodities produced commercially in each State will be established on a Statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued not later than *February 15* of each year. These commodity prices will be established by averaging the *monthly market prices of each commodity for the 12-month period preceding the calendar year in which the disaster occurs.* The monthly average market prices report, "Agricultural Prices," prepared by the National Agricultural Statistics Service (NASS), formerly the Statistical Reporting Service (SRS), will be mailed to each State Office from the FmHA National Office the first week of each month for the previous month. This report provides the average monthly prices for *all major* agricultural commodities produced in each State. For major commodities not reported monthly by NASS, State Offices will also be sent the NASS publication, "Crop Values Summary." This publication provides a 3-year history of seasonal average prices, by State and United States average, for all crops of any significance produced in the 48 contiguous States and Hawaii. Prices found in this annual publication, available by February 1 of the year succeeding the year being reported, are to be used as a *guide only* in establishing the annual price list of commodity prices only for those commodities for which the monthly average prices are not reported. State Directors *will* consult with other agricultural agency representatives and other agricultural lenders in the local area; and State Directors and Farmer Program Chiefs in adjoining States will consult each other for additional guidance before releasing their commodity price lists. Once established, these prices will not be changed for any EM loan processed under any disaster occurring on or after February 1 of that calendar year through January 31 of the next calendar year. These monthly and annual reports will be retained and used for reference each year when preparing the annual price lists of average commodity prices to be used Statewide for calculating actual production loss values, for all disasters that occur during the ensuing 12-month period.

(v) The amount of actual production loss will be calculated for the single enterprise which is a basic part of the farming operation (see § 1945.154(a)(13) of this subpart) by subtracting all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source (*i.e.*, crop insurance indemnity payments, ASCS disaster program payments) *for that enterprise,* from the gross dollar amount of production losses for that enterprise as determined in paragraph (a)(2)(iv) of this section.

(vi) Actual losses for tobacco, peanuts and other crops grown under acreage and/or poundage control will not be calculated differently than any other crop; i.e., the calculations must not include the dollar value of underproduced pounds to be sold or produced in future years. The value of underproduced poundage allotments and quotas must not be subtracted from the loss. All "controlled" crop acreages planted in the disaster year, including acreage above the producer's allotments and quotas, will be considered even though the carry-over crop is not eligible for price supports until the next marketing year.

(vii) Actual losses for spring and fall annual crops of the same species will be treated as two separate crop losses and listed separately on Forms FmHA 1945–22 and 1945–26. The crop(s) not affected by the disaster will be considered as having produced a normal year's yield.

(viii) The dollar value of the actual production loss for the single enterprise which is a basic part of the farming operation as designated by the applicant in Item F, Form FmHA 1945–22, will be divided by the previously calculated normal year's gross income for that enterprise. The result should be rounded to the nearest whole number. To illustrate, if the calculation shows a 29.49 percent production loss, round it down to 29 percent. If the calculation shows a 29.50 percent loss round it up to 30 percent. This establishes the percentage reduction in production from normal for that enterprise. If the percentage loss in *any* single enterprise (see § 1945.154(a)(13) of this subpart) which is a basic part of the farming operation equals or exceeds 30 percent, and the applicant is otherwise eligible, EM loan assistance will be considered.

(ix) Once eligibility is established based on production losses, the total production loss sustained by the applicant, directly attributable to the disaster, is computed by adding the gross dollar amount of production losses of *all* single enterprises, whether or not they constitute a basic part of the farming operation, and subtracting from this total all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source for those enterprises.

(x) The maximum EM loan for production losses is limited to *80 percent* of the total calculated actual production loss sustained by the applicant.

(xi) Production losses to hayland, pasture and rangeland used for grazing livestock owned by the applicant must be based on the production from only those acres which are utilized in the disaster year. Losses may be calculated by one of three methods when approved by the State Director. The State Director will decide which one of the following three methods will be used throughout the State to calculate losses to pasture and rangeland; and issue a State supplement to this subpart, setting forth the method(s) to be used Statewide.

(A) *The price per acre method.* The price per acre method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year's gross dollar value. To calculate this, multiply *the number of acres available to be grazed for the disaster year by the established rental charge per acre per month* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of months grazed per year during the highest 4 out of the 5 preceding years.*

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply the *number of acres grazed during the disaster year by the established rental charge per acre per month* (as determined in accordance with paragraph (a)(2)(xi)(A)(*1*) of this section); *by the number of months the livestock were able to be grazed during the disaster year.*

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(A)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(A)(*1*) of this section)

to determine the value of pasture loss suffered during the disaster year.

(B) *The charge per head or animal unit method.* The charge per head or per animal unit method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year by the established rental charge per animal or per animal unit per month* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); *by the average number of months grazed per year during the highest 4 out of the preceding 5 years.*

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year by the established normal rental charge per animal or per animal unit per month* (as determined in accordance with paragraph (a)(2)(xi)(B)(*1*) of this section); by *the number of months grazed during the disaster year.*

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(B)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(B)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(C) *The forage equivalent method.* The forage equivalent method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply the *number of acres grazed during the disaster year by the established price per pound or ton* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of pounds or tons of forage equivalent produced per acre per year during the highest 4 out of the preceding 5 years for forage of the type being used in this calculation.* (The State Office will set forth the forage equivalent values to be used or the methodology to be used to derive this value in a State Supplement. This information may be set forth on a countywide or statewide basis. The State Director may contact the State's Extension Service or other knowledgeable sources to assist in establishing the forage equivalent determination).

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply *the number of acres grazed during the disaster year by the established price per pound or ton* (this figure is established by the State Director in accordance with paragraph (a)(2)(xi)(C)(*1*) of this section); by *the number of pounds or tons of forage equivalent produced for forage of the type being used in this calculation produced in the disaster year.* (See paragraph (a)(2)(xi)(C)(*1*) of this section for further information.)

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(C)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(C)(*1*) of this section) to determine the value of pasture loss during the disaster year.

(xii) When a crop cannot be planted, an applicant may treat the loss either as a production loss or as a physical loss (see paragraph (b) of this section). When a crop cannot be planted and the applicant chooses to treat the loss as a production loss, the loss will be calculated as set out in this paragraph as follows: Add all income that is derived from the enterprise to the variable and fixed costs which were not incurred because of the disaster. (The cost figures will be derived from current crop enterprise budgets prepared by State Agricultural Extension Service economists, based on normal farming conditions in the area.) Subtract this figure from the value of the normal year's production. The resulting figure is the gross dollar amount of production loss.

(xiii) When a crop can be only partially planted due to a disaster *or* when perennial crops (such as fruits or nuts) already growing cannot be produced or harvested due to a disaster, the loss will be considered a production loss. Such loss will be calculated as set out in paragraph (a)(2)(xii) of this section.

(xiv) When a crop is planted and completely destroyed by a disaster, a yield of "zero" may be shown on Form FmHA 1945–22 for the disaster year but only if no part of the crop could be harvested and no substitute crop could be planted and harvested. When figuring the actual dollar amount of production losses subtract the normal costs of harvesting and marketing which were not incurred for crops which were completely destroyed by a disaster. If a substitute crop is planted and harvested during the same crop year, a yield of "zero" should be shown for the original crop and the actual yield for the substitute crop on Form FmHA 1945–22. On Form FmHA 1945–26, the dollar value of the substitute crop must be subtracted from the dollar value of the normal year's production.

(xv) Losses to feed crops will be established by determining the normal year's gross dollar value of those crops and subtracting the disaster year's gross dollar value of feed crops. The difference establishes the disaster year's gross dollar loss for feed crops. The gross dollar value of feed crops produced is derived by multiplying the number of feed crop acres by the yield per acre by the unit price.

(xvi) When an applicant elects to sell feeder livestock at an earlier date than usual rather than purchase feed to replace that which was lost as a result of the disaster, the difference between what the sale price would have been if the livestock had been fed for the normal period and the disaster year's premature sale price may *not* be claimed as a loss.

(xvii) Eligibility for production losses to livestock enterprises may be based *either* on loss of production in feed crops, including pasture, to be fed to the applicant's own livestock; *or* on loss (from normal) of weight gain of the livestock or livestock products produced, but *not both.* The value of feed produced on native rangeland and pasture constitutes a small portion of the total input costs of maintaining a foundation herd of breeding animals and their offspring. Therefore, loan approval officials will calculate production losses to livestock operations based on reductions in animal unit weight gain and natural increase in numbers.

*Example*

A rancher has accurate records indicating that the rancher's 200 head foundation breeding cow herd produced a normal calf crop average of 85 percent (170 calves) with an average weaned weight of 350 pounds per calf. As a result of a drought, the rancher found it necessary to cull the cow herd by 50 cows over the normal number culled.

The predisaster value of the cows was $600 per head. The rancher received .35¢ per pound for the cull cows, which had an average weight of 1100 pounds.

Additionally, the rancher's calf crop was only 70 calves with an average weight of 240 pounds in the disaster year (DY). Therefore, the rancher would have sustained a physical loss on the cow herd (see § 1945.163 (b)(6)(i)(B)) and a production loss on the calf crop.

The established price for calves is .60 per pound.

Calculations:

The rancher's normal year's (NY) calf crop was 85 percent. Since the rancher reduced the breeding herd by 50 cows, an adjustment must be made to determine the calf losses. The reduced herd size is now 150 cows.

150 cows × 85% = 128 calves (NY calf crop from a cow herd of 150)

Normal year:

| | |
|---|---|
| 128×.60×350 (NY income) | $26,880 |
| 70×.60×240 (DY income) | 10,080 |
| Loss | $16,800 |

$$\frac{16,800}{26,880} = 63\% \text{ production loss.}$$

Additionally, an EM loan may be made based on the physical loss of 50 cows. (See example in § 1945.163 (b)(6)(i)(B)).

(xviii) Claims of production losses from the applicant will be verified by FmHA when the applicant's claims appear to be unreasonable.

(xix) Production losses for orchard crops (fruit or nut) will be only for the crop loss due to the qualifying disaster and determined in accordance with paragraph (a)(2) of this section.

(xx) When an applicant's farming operation(s) is conducted in a designated county(ies) and a non-designated county(ies), eligibility will be established based on losses to a single enterprise which constitutes a basic part of the farming operation, without regard to whether the single enterprise is located in the designated county. The disaster year's *actual* yields, both in the designated and non-designated counties, will be used to determine losses. Compensatory payments will be subtracted as explained in paragraph (a)(2)(v) of this section when determining eligibility. The amount of the production loss loan will be limited to the production loss sustained in the designated county, *minus* compensatory payments received or to be received for that portion of the farming operation located in the designated county.

(xxi) The County Supervisor will assign normal yields to all unplanted acreage covered by a Payment in Kind (PIK) contract, when calculating crop production losses on Form FmHA 1945–26.

(b) *Physical losses.* (1) In order to qualify for an EM loan(s) for physical losses, the damaged or destroyed physical property must be essential to the successful operation of the farm and if not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis. The financing necessary to recover from the physical loss must be actually needed to permit the applicant to continue the operation.

(2) The claimed value of all physical losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement requested.

(3) Physical loss loan funds can be used to pay for only contracted or hired labor and materials and supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary repair and replacement.

(4) Damage to or destruction of nonessential buildings, structures or other items will not be repaired or replaced with EM physical loss loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for losses to essential farm buildings, structures and other items which need to be repaired or replaced.

(5) The maximum physical loss loan(s) will be determined by subtracting all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source from the value of all actual physical losses caused by the disaster.

(6) Physical loss is equal to the cost of repair or replacement, with items of comparable productive capacity for items lost, damaged or destroyed by or as a result of the disaster. Such items include:

(i) Livestock

(A) Death of an animal(s) caused by the disaster.

(B) Disaster related damage to an animal's(s') health, which has impaired or reduced its normal production capability and its market value. This includes forced reductions of foundation breeding stock caused by the disaster. Physical losses, under these conditions, would be calculated by establishing a dollar value per head, or unit, at the time the disaster occurred, and deducting the reduced dollar value received from the disaster-caused sale of the animals. The difference in the two values would be considered a physical loss. *(THE ANIMALS SOLD MUST BE OVER AND ABOVE THE NUMBERS NORMALLY CULLED EACH YEAR).*

*Example:*

Using the same criteria set forth in the example in § 1945.163(a)(2)(xvii) the calculation to determine a physical loss would be calculated as follows:

Predisaster market value—50 cows×$600/cow=$30,000

Price received for cull cows—50 cows×1100 lbs.×.35¢=$19,250

Physical loss=$10,750 ($30,000−$19,250)

(ii) Livestock products on hand or stored.

(iii) Harvested crops on hand or stored.

(iv) Supplies on hand.

(v) Essential machinery and equipment.

(7) The actual physical loss for farm dwellings and essential household contents to be used by the operator and existing labor is the amount required to repair or replace the dwelling and/or household contents which will meet all applicable code requirements; and which will provide permanent, adequate, decent, safe, sanitary and modest living quarters.

(8) The actual physical loss for farm service buildings and farm real estate other than buildings is the amount required to repair the property or replace it with a building or property of like quality and capacity which will meet all applicable code requirements and which will adequately meet the needs of the farming operation.

(9) The actual physical loss for income-producing trees (fruit or nuts) is the cost of removing the damaged or destroyed trees, cleaning debris and preparing the land for replanting, plus the cost of suitable replacement trees and other expenses necessary to reestablish income-producing trees. Losses will not be determined by establishing a value for the trees destroyed or damaged. Any salvage value will be deducted from the loss. The applicant may choose to replace the damaged or destroyed trees with a different enterprise and may use actual loss loan funds for that purpose. (See Exhibit D of this subpart for physical loss loans to citrus growers.)

(10) The actual physical loss to trees (grown for timber) will be determined by establishing the value of trees less any salvage value. This estimate of value must be determined by a recognized forester who will cruise the timber and establish the value of the destroyed and damaged trees. The applicant may choose to replace the damaged tree enterprise with a different enterprise and use the actual loss loan funds for that purpose. Those applicants whose major farming enterprises are other than tree farming, but who have a wood lot that has been damaged, will have their tree losses considered as physical losses in the same manner as set forth for tree farms.

(11) The actual physical loss for crops growing or pasture is the cost of cleaning debris, preparing the land for replanting, seed, fertilizer, and other expenses necessary to *reestablish* the crops or pasture. These costs can exceed the market value of the crops or pasture at the time of the disaster.

(12) When a crop cannot be planted during the disaster year due to the disaster and the applicant chooses to treat the loss as a physical loss, the actual physical loss is limited to the cost

of land preparation, other expenses incurred to the date of the disaster for crops that could not be planted, and a pro rata share of the total operation's fixed costs such as rent, taxes, and insurance. The applicant must provide an itemized list of all the claimed expenses incurred in the disaster year for those enterprises for which disaster losses are claimed. This list must be signed by the applicant. The amount of an EM loan cannot exceed the total itemized expenses listed by the applicant.

(13) EM loans will not be made to flood and mudslide victims to repair or replace damaged or destroyed farm dwellings or farm service buildings and their contents in areas where "National Flood Insurance" is available, except as authorized in § 1945.173(b) of this subpart.

(14) When an applicant has *dwelling* losses only and is eligible for an SBA physical loss loan in an area where SBA physical loss loans are available, only SBA will make the loans for restoration or replacement of the dwelling.

(c) *Household personal content losses (Subtitle B purposes).*

(1) In order to qualify for EM loan assistance for this purpose, the damaged or destroyed household property must be essential to the maintenance of the household; and if not repaired or replaced, the farmer would be unable to remain on the property and continue the farming operation on a reasonably sound basis.

(2) The claimed value of all household losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement.

(3) Labor, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary household repairs and replacements.

(4) Damage to or destruction of non-essential household items will not be replaced or repaired with EM loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for those losses.

(5) The maximum EM loan(s) for repair or replacement of personal household contents is $20,000.

(6) The EM loan(s) will be determined by subtracting all insurance claims and other compensation received or to be received for household and/or losses from the cost of repairs or replacement value of the essential household items.

(d) *Compensation for losses.* All financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source received by an EM loan applicant will reduce the applicant's loss by the amount of such compensation, and thus will be considered in determining the applicant's eligibility for EM loan assistance and the maximum amount of loss loan entitlement. The amount of any disaster program benefits received from ASCS, including the Emergency Feed Assistance Program (EFAP), Emergency Conservation Program (ECP), and Disaster Program payments *will* be considered as compensation for losses (ASCS Deficiency Payments are not to be considered as compensation).

(e) *Maximum EM loans.* This amount will be limited to the amount necessary to restore the farm to its pre-disaster condition; however, this will not exceed the sum of the maximum production loss (paragraph (a)(2)(x) of this section) and the maximum physical loss (paragraph (b) of this section) or *$500,000,* whichever is the lesser. Indebted EM loan borrowers can receive later EM loans not to exceed *$500,000* for each additional qualifying disaster. No applicant or individual member of an entity applicant can be liable for more than $500,000 in EM loans per disaster.

**§§ 1945.164–1945.165 [Reserved]**

**§ 1945.166 Loan purposes.**

(a) *Policy on use of EM loan funds.* (1) The amount of the maximum EM loan(s) in addition to the limitations contained in § 1945.163(a)(2) (x) and (e) of this subpart, is further limited to the actual dollar loss, or the actual amount of essential family, farm, and nonfarm enterprise credit that the applicant needs to carry on normal operations, *whichever is the lesser.* EM loan funds will not be used to finance a nonfarm enterprise, unless the loan is made to an individual applicant *and* such enterprise is needed to support a reasonable standard of living for the family. The use of EM loan funds will be identified in the farm and home plan so that determination can be made as to whether such loan(s) were used for authorized purposes and covered all or a portion of the actual dollar loss.

(2) EM loan funds may be used for those purposes described in paragraphs (b) and (c) of this section.

(b) *Real estate (Subtitle A) purposes.* EM loans for real estate purposes may be made to *owner-operators only.* The following are authorized real estate purposes for which EM loan funds may be used:

(1) Any Farm Ownership loan purpose (see Subpart A of Part 1943 of this chapter);

(2) Replace land and/or water resources that cannot be restored due to the disaster;

(3) Establish a new site for farm dwellings and service buildings so that the applicant can relocate outside of a flood or mudslide prone area;

(4) Replace land necessary to restore an effective operation which was liquidated as a result of the disaster before an EM loan could be made;

(5) Refinance secured and unsecured debts including FmHA debts.

(c) *Operating (Subtitle B) purposes.* EM loans for operating purposes may be made to *owner-operators or tenant-operators.* The following are authorized operating purposes for which EM loan funds may be used:

(1) Any Operating Loan purpose (see Subpart A of Part 1941 of this chapter);

(2) Purchase and repair of essential household contents, and pay essential family living expenses required. Entity operations are not eligible for loan funds to be used for these purposes;

(3) Refinance secured and unsecured operating type debts in whole or in part, including existing FmHA debts;

(4) Pay reasonable expenses customarily paid when obtaining, planning and closing a loan made for operating purposes, *i.e.,* fees for legal, architectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. It is not intended that this paragraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets including farm and home plans and other FmHA forms used in processing such loans.

**§ 1945.167 Loan limitations and special provisions.**

(a) *EM loans prohibited on crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will *not* be eligible for EM loans to cover damages and losses to any crop(s) planted and harvested after December 31, 1986, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans on those crops which could have been insured against the losses, unless the crops were not planted due to the declared/designated/authorized disaster(s).

(b) *Relationship between EM loans and other FmHA loans.* An eligible EM loan applicant's *total* credit needs *will* be first considered through use of EM

loan authorities in the maximum amount of entitlement before other regular (FO, OL, SW) FmHA farmer program loan authorities are considered and used as a means of assisting the applicant/borrower.

(c) *Use of EM loan funds is not authorized for expansion purpose(s) beyond a family size farm.* EM loan funds *will not* be used to expand an applicant's farming, ranching, or aquaculture operation beyond that which constitutes a family size farming/ranching operation(s). This limitation is not intended to prohibit minor changes in crop or livestock enterprises provided:

(1) Any new or changed crop or livestock system is proven for the area; and

(2) The applicant has the knowledge and ability to manage the changed operation; and

(3) Substantial new or additional capital investment is not required.

EM applicants who operate family farms (as defined in § 1941.4 of Subpart A of Part 1941 of this chapter) may, if eligible, receive regular FmHA farm ownership (FO), and/or operating (OL) loans simultaneously with their initial (EM) loan to help finance their farming operations. If a borrower expands the farming operation beyond a family farm, no further EM loan assistance will be given even though the borrower may suffer qualifying losses under a new declared/designated/authorized disaster.

(d) *Applicants involved in more than one operation.* Loans to applicants involved in more than one farming operation will be considered so long as the loan limit set out in § 1945.163 (e) of this subpart is not exceeded.

(e) *Refinancing guaranteed loans.* An EM loan will not be made to refinance a guaranteed loan, except when the following conditions are met:

(1) The circumstances causing the need to refinance were beyond the borrower's control;

(2) Refinancing is in the best interest of the Government.

(f) *New appraisals.* New "Appraisal of Real Estate Reports" are not required if the appraisal report in the file is not over one year old, unless the approval official requests a new appraisal report, or unless significant changes in the market value of real estate have occurred in an area within the one-year period. Any changes in the value of real estate or chattel security will be recorded, dated and initialed by the certified appraiser on the appropriate appraisal reports in the file.

(g) *Recordkeeping.* EM borrowers receiving or indebted for EM loans of $100,000 or more are required to keep hard farm records on an approved format or use an accountant or a farm management service computer system as long as they are indebted for EM loans. EM borrowers are required to retain these records for three years. (See Subpart B of Part 1924 of this chapter.)

(h) *Disbursement of loan funds.* Loan funds which will not be disbursed for specific purposes at loan closing will *not* be requested in the initial request for funds from the Finance Office. The "Loan Disbursement System" will be used to make funds available when they are actually needed. See § 1945.189(a)(8) of this subpart for instructions on the use of supervised bank accounts.

(i) *Prohibition on guaranteeing repayment of advances from other credit sources.* FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(j) *Applicants previously indebted to FmHA.* An EM loan will not be approved if the applicant's previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1) or if a debt settlement is currently being processed for the applicant under that Part or if the applicant has been released from liability for an FmHA debt or if the applicant's property has been foreclosed on or repossessed by FmHA, unless the debt settlement, release or foreclosure was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement, release, or foreclosure have been removed or will be removed by making the loan.

(k) *Highly erodible land and conversion of wetland.* Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

**§ 1945.168 Rates and terms.**

(a) *Interest rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. Interest on the initial advance will accrue from the date of the promissory note. Interest on other advances will accrue from the date of the loan check for each such advance.

(b) *Terms of loans.* Loans will be scheduled for repayment at such time, as the FmHA approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life of the security and the repayment ability of the applicant, as reflected in the completed farm and home plan, when setting the term of each loan. There must be some payment, i.e., an irregular payment, scheduled at least annually. Loans will not be scheduled for terms longer than are justified and supported by the farm and home plan. EM loans based on production losses and/or physical losses to chattels, foundation livestock and other intermediate term capital assets cannot exceed a 20 year payback; and EM loans based on physical losses to real estate, e.g., land, buildings and structures cannot exceed a 40 year payback.

(1) *Operating purposes (Subtitle B).* EM loans made for operating purposes will be scheduled for repayment as follows:

(i) Normally, loans will be scheduled for payment in a period not to exceed 7 years. However, loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer term, and the loan(s) can be secured for the longer term. Such longer period may be approved as warranted, but cannot exceed 20 years. This longer repayment period will be used only when the farm and home plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reason(s) that a term longer than 7 years is given must be documented in the County Office case file.

(ii) Loans made for production expenses under § 1945.166(c) of this subpart, or for payment of bills incurred for such purposes for the operating or crop year being financed, will be scheduled for repayment when the principal income from the year's operations is normally received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than crops that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph (b)(1) (i) and (iii) of this section.

(iii) Loans made to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, will be

scheduled for repayment when the principal income from the sale of such livestock or livestock products is planned to be received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than the livestock and livestock products that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph(b)(1) (i) and (ii) of this section.

(iv) When conditions warrant, installments may vary in amount. However, there must be at least a partial interest payment scheduled annually. Also, the final installment will not be larger than the amount which can be expected to be refinanced by other agricultural lenders or be repaid within a rescheduled period of 15 years. The applicant must be advised before the loan is closed that FmHA will review each case at the end of the initial loan term to determine if rescheduling is warranted, and that there is no obligation for FmHA to continue with the borrower after the expiration of the initial loan term.

(2) *Real estate purposes (Subtitle A).* EM loans made for real estate purposes under § 1945.166(b) of this subpart will normally be scheduled for repayment in not to exceed 30 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. A longer term may be approved as warranted, but cannot exceed 40 years. The longer repayment period will be used only when it is evident the applicant will be unable to repay the loan in a shorter period. The reason(s) for giving the longer period must be well documented in the County Office case file.

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

(d) *Graduation.* Borrowers will be required to graduate when FmHA determines they are able to obtain their needed credit from conventional sources. All borrowers will be advised that they will be reviewed for graduation periodically in accordance with the graduation procedure in Subpart F of Part 1951 of this chapter. EM borrowers will be reviewed for graduation three (3) years after their initial loan is made and every two (2) years thereafter, until graduation is achieved or the EM indebtedness is paid in full. Applicants will be advised during loan processing and again at loan closing that they will be required to refinance at any time when other satisfactory credit is available to them, even though their loans have not fully matured.

**§ 1945.169 Security requirements.**

The County Supervisor is responsible for seeing that adequate and proper security is obtained and maintained and that the security instruments have been properly executed and recorded to protect the interest of the Government.

(a) *General requirements.* (1) Except for the modifications contained in paragraph (d) of this section, security must be of such a nature and extent that repayment of the loan(s) is assured, considering the applicant's managerial ability, soundness of the operation, and projected earnings. Security for loans may include, but is not limited to the following: land, buildings, structures, fixtures, furniture, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security may also include assignments of leases or leasehold interests having a mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(2) A lien will not be taken on property that cannot be made subject to a valid lien; nor will a lien be taken on subsistence livestock, household goods, small tools and small equipment such as handtools, power lawn mowers, and other items of like type not needed for security purposes. A lien on feed crops does not have to be taken if the crops produced by the borrower are used to feed livestock, other than livestock being fed for market, and the loan is otherwise well secured.

(3) When an EM loan(s) is made to an individual applicant, the loan approval official will require the best lien obtainable on all assets owned by the applicant. When an EM loan(s) is made to an entity the loan approval official will require the best lien obtainable on all assets owned by entity applicant, and all assets owned by each member of the applicant entity.

(b) *Personal liability.* The promissory will be signed as follows:

(1) Individuals. Only one person (the applicant) will sign the note as a borrower. If a cosigner is needed (see § 1910.3 (e) of Subpart A of Part 1910 of this chapter), the cosigner will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(2) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation. The individuals designated by the cooperative or corporation that will operate the farm will sign the note as cosigner(s) and will be personally liable for the debt.

(3) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

(c) *Personal and corporate guarantees by cosigners.* (1) If a review of all credit factors indicates the need for additional security, the loan approval official may require additional personal and/or corporate guarantees by a cosigner(s), including guarantees from parent, subsidiary or affiliated companies; relatives of the applicant; or any other willing party having collateral equity in mortgageable assets. The loan approval official will require that such guarantees be secured by security which has an equity value. Any security referred to in paragraph (a)(1) of this section may be used to secure the guarantees.

(2) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 30 days old at time of filing), signed by the guarantors and disclosing community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 30 days old at time of filing), certified by an officer of the corporation.

(3) When security is taken under paragraph (c) of this section it will be serviced in accordance with Subpart A of Part 1962 of this chapter, if chattels; and in accordance with Subpart A of Part 1965 of this chapter, if real estate.

(d) *Applicant's repayment ability.* When adequate security is not available because of the disaster, the loan approval official will accept as security such collateral as is available, if the following conditions are met:

(1) A portion or all of the security has depreciated in value *due to the disaster;* and

(2) The available security, together with the approval official's confidence in the applicant's repayment ability, is adequate to secure the loan. When considering "repayment ability" as a form of security, the reserve or margin between the balance available for debt repayment shown on the farm and home plan, and the principal and interest scheduled for payment is the "repayment ability" collateral which may be considered in loan making actions when this plan is developed for the typical year. The "typical year" plan must show that the portion of the loan secured by "repayment ability" will be paid back in a reasonable period of time, *i.e.*, the loan balance will be reduced to a fully secured loan within 3 years.

(e) *Life insurance.* If the loan approval official believes it is needed as additional security, life insurance *may* be required for the individual borrower or for the members, stockholders, partners, joint operators, of an entity borrower, listing FmHA as the beneficiary. This life insurance may be decreasing term insurance. A schedule of life insurance available as security for the loan will be included as part of the application.

(f) *Security for operating type purposes.* (1) EM loans made for Subtitle B (operating) purposes will be secured by a first lien on the crop(s) and/or livestock and livestock products being financed with EM loan funds, plus additional security, as prescribed in paragraph (a) of this section to assure that the Government's financial interest will be protected.

(2) The advice of OGC will be obtained on how to perfect a security interest when milk base and grazing permits are taken as security.

(3) General intangibles, accounts receivable, and contract rights may be taken as security for production loss loans made to contract feeders, tenants with share-lease arrangements, or other farmers with similar arrangements.

(g) *Security for real estate type purposes.* EM loans made for Subtitle A (real estate purposes) will be secured by a lien on all property as prescribed in paragraph (a) of this section. Title work is required on all real estate necessary to fully secure the loan. No title work will be required on real estate taken as security over and above the amount necessary to fully secure the loan.

(h) *Security for personal household contents.* EM loan funds advanced for the purposes authorized in § 1945.163(c)(2) of this subpart will be secured by equity in farm machinery, livestock and/or real estate. Liens will not be taken on basic essential personal property (See § 1945.154 (a)(16) of this subpart).

(i) *Purchase contracts.* If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the seller must agree in writing that any insurance proceeds received for real estate losses will be used only to replace or repair the damaged real estate improvements which are essential to the farming operation; or used for other essential real estate improvements; or paid on the EM loan or on any prior real estate indebtedness, including the purchase contract. If necessary, the applicant will negotiate with the seller to arrive at a new contract without any provisions objectionable to FmHA.

(3) If a satisfactory contract for sale cannot be negotiated or the seller refuses to enter into the agreement described in paragraph (i)(2) of this section, the applicant will make every effort to refinance the existing purchase contract. If the applicant cannot obtain refinancing from another source, EM loan funds may be considered to pay off the contract.

(4) If the conditions set out in paragraphs (i) (1), (2) and (3) of this section exist and an EM loan is approved, it can be closed provided the FmHA escrow agent or designated attorney certifies on Form FmHA 427–10, "Final Title Opinion", or in separate writing that:

(i) The purchase contract is not subject to summary cancellation on default and does not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(ii) The seller has agreed, in writing, to give FmHA notice of any breach by the purchaser, and has also agreed to give FmHA the option to rectify the condition(s) which amounts to a breach within thirty days. The thirty days begin to run on the day FmHA receives written notice of the breach.

(j) *Prior liens which may jeopardize the Government's security position.* If any prior liens against real estate offered as security contain future advance provisions or other provisions which might jeopardize the security position of the Government or the applicant's ability to meet the obligations of these prior liens and to pay the EM loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions to the interest of the Government. However, the Government's lien may be subject to the lien of another creditor for amounts advanced or to be advanced for annual operating and family living expenses for the operating or calendar year. The County Supervisor will determine if the creditor will be required to execute Form FmHA 441–13, "Division of Income and Nondisturbance Agreement," or a similar form approved by the OGC.

(k) *Circumstances under which advance notice of foreclosure or assignment is required.* When a junior lien on real estate is to be taken as security for a loan in States where a prior lienholder may foreclose the security instrument under power of sale, or otherwise, and extinguish junior liens of private parties without giving junior lienholders actual notice of the foreclosure proceedings, the prior lienholder must agree in writing to give FmHA advance notice of foreclosure or assignment of the mortgage.

(l) *Hazard insurance.* Hazard insurance with a standard mortgage clause naming FmHA as beneficiary may be required for every loan made. The minimum amount of insurance required is the lesser of the replacement cost of the property being insured or the amount of the loan. If essential insurable buildings are located on the property, or if new buildings are to be erected or major improvements are to be made to existing buildings, the applicant will provide adequate hazard insurance coverage at the time of loan closing, or as of the date materials are delivered to the property, whichever is appropriate. Notwithstanding the requirements of Subpart A of Part 1806 (FmHA Instruction 426.1) of this chapter, when the real estate appraisal report shows that the present market value of the land after deducting the value of buildings shown on the report exceeds the amount of the debt (including the EM loan) and the owner has equity equal to or exceeding the amount of the debt (including the EM loan), real estate property insurance may not be required. However, the applicant will be encouraged to obtain such insurance, if the applicant does not already have it, to protect the applicant's interest. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that, when settlement is made, the proceeds of such claims will be used for replacement or repair of buildings, application on debts secured by prior liens, or application on the EM loan.

(m) *Crop insurance.* Crop insurance is a good farm management tool. Loan approval officials will, therefore, during the loan making process, encourage *all* borrowers, who grow crops, to obtain and maintain FCIC crop insurance or multi-peril crop insurance, if it is available. However, such insurance *will be required,* when applicable, in accordance with the following provisions:

(1) When EM loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and those crops will serve as security for the loan, crop insurance will be required, if available, as a loan approval condition; and FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) Even if FmHA is *not* the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), FmHA will require such borrowers indebted for EM loans to carry crop insurance, if available, even if the primary lender will be the beneficiary under the "Assignment of Indemnity".

(3) When EM loans are based on physical losses only, crop insurance will not be required unless the EM loan funds are to be used for annual crop production expenses.

(4) When the payment of crop insurance premiums is not required until after harvest, the premiums will be paid by releasing insured crop(s) sale proceeds, notwithstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905–12, "Monthly Expirations," of the dates which borrowers' crop insurance premiums must be paid. This is in accordance with FmHA Instruction 1905–A, a copy of which is available in any FmHA office, and will assure that crop insurance policies do not terminate while insured crop(s) serve as security for FmHA loans.

(n) *Indian trust lands.* EM loans which are secured by trust or restricted land will be handled as follows: USDA and the Department of the Interior have agreed that FmHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restrictions against alienation, subject to statutes under which they may, with the approval of the Secretary of the Interior, give valid and enforceable mortgages on their land. These statutes include, but are not limited to, the Act of March 29, 1956 (70 Stat. 62). When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA, the local representatives of the Bureau of Indian Affairs (BIA) will furnish requested advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the Area Director or other appropriate local official of the BIA as to the manner in which the information will be requested and furnished. A State supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under these conditions.

(o) *Unpatented public lands.* See Exhibit A of Subpart A of Part 1943 of this chapter for making EM loans to entrymen on unpatented public lands.

(p) *Taking security instruments.* The taking and filing of security instruments will be in accordance with Subpart B of Part 1941 of this chapter (chattels and crops) and with §§ 1945.169 and 1945.189 of this subpart (real estate). The borrower must have marketable title to the property which secures the loan and FmHA must ascertain that, when the security instruments are filed, no suits are pending or threatened which would adversely affect the interest of the borrower and the Government.

(q) *Assignments and consents.* (1) The value of stock required to be purchased by Federal Land Bank (FLB) Association borrowers may be added to the recommended market value of real estate, provided:

(i) An assignment can be obtained on the stock; or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan as long as any FmHA loan is outstanding, or

(B) The stock refund check is made payable to the borrower and FmHA.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of Form FmHA 422–1, "Appraisal Report (Farm Tract)."

(2) An assignment of all or part of the applicant's share of income is required when title to a livestock or crop enterprise is held by a contractor under a written contract or when the enterprise is to be managed by the applicant under a share lease or share agreement. The contract, share lease or share agreement will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops." (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement) and so forth, in paragraph (1)(b) of the financing statement. A form approved by OGC will be used to obtain the assignment.

(3) An assignment of income will ordinarily be taken to protect FmHA's interests.

(i) Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used for assignments of real estate security income unless that form is legally inadequate in a particular State, in which case it may be adapted with the approval of the OGC.

(ii) Form FmHA 441–8, "Assignment of Proceeds from the Sale of Products," will be used for products or income in which FmHA does not have a security interest under the UCC. Other forms approved by OGC may be used when this form is not adequate.

(iii) Form FmHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used for dairy products in which FmHA has a security interest under the UCC.

(iv) Form FmHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," will be used for products or income, except dairy products, in which FmHA has a security interest under the UCC.

(v) Forms provided by ASCS will be used for assignments of disaster and regular agricultural program payments.

(4) In UCC states, an assignment of income constitutes a security agreement and should be treated accordingly.

**§§ 1945.170–1945.172 [Reserved]**

**§ 1945.173 General provisions—compliance requirements.**

(a) *Scope of operation to be financed.* Only family size farming operations may be financed with EM loans, subject to the eligibility requirements, loan amount ceilings, repayment ability, need, available security, and other provisions of this subpart.

(b) *Flood or mudslide prone areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas This will not prevent making loans on farms where the farmstead is located in a flood or mudslide prone area and

funds are not included for building improvements. The flood or mudslide hazard will be recognized in the appraisal report.

(1) In identified special flood or mudslide prone areas as designated by FEMA, the following policies are applicable for EM loans being made to finance buildings or fixtures and furnishings contained therein.

(i) If flood or mudslide insurance is available and an applicant has not taken such insurance and has suffered flood or mudslide losses, an EM loan may be made, only if flood or mudslide insurance is purchased before the EM loan is closed.

(ii) If flood or mudslide insurance is available and an applicant previously received and still is indebted for an EM loan, Rural Housing Disaster (RHD), or SBA disaster loan; and a condition of the loan required the obtaining of flood insurance but the applicant allowed the insurance to lapse; and the applicant had new flood or mudslide losses, the applicant will be considered to be in default on the loan agreement and dealt with accordingly.

(iii) If flood or mudslide insurance is available and an applicant had previously received an EM, RHD, or SBA disaster loan; and a condition of the loan required obtaining flood or mudslide insurance and the applicant paid the loan in full and let the insurance lapse; the applicant will be handled in accordance with paragraph (b)(1)(i) of this section.

(iv) In those areas that have been designated by FEMA as special flood or mudslide hazard areas and flood or mudslide insurance is not available or has been withdrawn by FEMA, an applicant can receive an EM loan provided the farm buildings, including the dwelling, are relocated outside the 100-year flood area.

(v) EM loans to repair or replace farm buildings, including dwellings, must meet the requirements of § 1806.25 (a) or (b) of Subpart B of Part 1806 of this chapter (paragraph V, A or B of FmHA Instruction 426.2) as applicable, or be relocated outside the 100-year flood area.

(2) When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, EM loan funds may be used subject to the following:

(i) The Corps of Engineers or the SCS will be consulted concerning:

(A) Likelihood of flooding.

(B) Probability of flooding damage.

(C) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(ii) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with the requirements of Subpart G of Part 1940 of this chapter.

(c) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400–4, "Assurance Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than § 10,000.

(d) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 and Subpart G of Part 1940 of this chapter will apply.

(e) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable requirements.

(f) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 of this chapter apply when EM funds are used involving tracts of less than 25 acres if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(g) *Nondiscrimination requirements.* In accordance with Federal Law, the FmHA will not discriminate against any otherwise qualified applicant on the basis of race, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract), with respect to any aspect of a credit transaction. The policy statement set forth in § 1945.151(a) of this subpart will also apply to credit transactions.

(h) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including its use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Program Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or aquaculture farming enterprises.

**§ 1945.174 [Reserved]**

**§ 1945.175 Options, planning and appraisals.**

(a) *Optioning land.* When purchasing real property an applicant is responsible for obtaining options in accordance with the provisions contained in § 1943.25(a) of Subpart A of Part 1943 of this chapter.

(b) *Planning.* (1) A farm and home plan and Form FmHA 431–4, "Business Analysis-Nonagricultural Enterprise," when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter and in accordance with the FMIs. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. However, when the EM loan will be for not more than $25,000, Tables A, D, and E of Form FmHA 431–2 may be left blank, and only the totals in Tables G and J should be shown, provided Form FmHA 410–1 is completed and accurately reflects the applicant's current circumstances, and no supervision is planned. The plan *will* show any major items of expenditure and the reason(s) these items are needed. When preparing a plan of operation, it is usually necessary to plan for a capital expenditure reserve during interim years and the typical year. Realistically, this will reflect the depreciating value of machinery, equipment or other essential capital expenditure items, which it is prudent to expect will need to be replaced or require major repair. Also, all recurring and carry-over debts should be considered in a typical year plan. In addition, when all of the loan funds are not to be disbursed at loan closing, a *Monthly Budget* will be prepared showing the specific amount to be disbursed for each associated loan purpose for each month. The funds will be disbursed through use of the loan disbursement system (future advances) or, when determined necessary, through a supervised bank account.

(2) Development work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter. Also, the provisions of Subpart E of Part 1901 of this chapter will be met in connection with EM loans involving recreational enterprises and the construction of buildings.

(c) *Appraisals.* (1) Real estate appraisals will be completed, on Form FmHA 422–1, or Form FmHA 1922–8, "Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by an FmHA employee authorized to make farm appraisals, when real estate is taken as the primary security for the EM loan. The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA 1922–11, "Appraisal Form for Mineral Rights." Appraisals are not required when:

(i) The amount of EM loan(s) plus any existing FmHA principal indebtedness is $25,000 or less, and

(ii) The loan approval official determines the loan is adequately secured without an appraisal, and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be taken as security, and

(iv) The provisions of paragraph (c)(4) of this section are applicable.

(2) Real estate appraisals will be completed as provided in FmHA Instruction 422.1 (available in any FmHA office). However, the value of assets that secure EM loans associated with a disaster having any portion of its incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals, all of which must be made a part of the file. These appraisals will show:

(i) The asset value on the day before a State Governor's, Indian Tribal Council's, or an FmHA State Director's first EM designation request, which is associated with the naming of one or more counties in a State as a disaster area where eligible farmers may qualify for EM loans; or

(ii) The asset value one year (365 days) before the date set in paragraph (c)(2)(i) of this section.

(A) The following types of real estate offered as collateral for securing EM loans will be appraised at the present market value only;

(*1*) Farm real estate the applicant/borrower did not own on the dates set forth in paragraph (c)(2) (i) and (ii) of this section.

(*2*) Real estate "not owned" by the applicant/borrower (for example, a relative if offering real estate as collateral for the proposed EM loan).

(*3*) A single family dwelling located on a nonfarm tract.

(*4*) Other types of real estate such as apartment houses and commercial buildings. The County Supervisor will request the assistance of the State Director in establishing the value of such real estate.

(B) Sales data utilized in the preparation of the necessary appraisals should conform to the dates set forth in paragraph (c)(2) (i) and (ii) of this section, to ensure a fair market value of the property is established. In addition, it should be confirmed that said sales resulted from reasonable sales efforts and that both the buyer and seller were willing, informed, and knowledgeable parties.

(3) When FLB stock is to be used in establishing the Recommended Market Value (RMV) of the real estate being appraised, see § 1945.169(q)(1) of this subpart.

(4) When real estate is taken as additional security (for loans in which the primary security is subject to rapid depreciation or is of a high risk nature, such as crops), no appraisal report will be required for the additional security, provided the County Supervisor determines the security is adequate, and records the estimated value in the running case record, shows the date the property was inspected and certifies that in his/her opinion the estimates are correct based on knowledge of the value of the comparable assets in the area.

(5) Chattel appraisals will be completed on Form FmHA 1945–15, "Value Determination Worksheet," when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used as appropriate. The value of assets that secure EM loans associated with a disaster having any portion of the incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals, all of which must be made part of the file. These appraisals will be based on the same information contained in paragraphs (c)(2) (i) and (ii) of this section. Chattels not owned by the applicant, and nonfarm chattel property offered as security (such as planes, house trailers, boats, etc.) will be appraised at the present market value only. Chattels that the applicant/borrower did not own on the dates set forth in paragraphs (c)(2) (i) and (ii) of this section will be appraised at the present market value only.

(6) Abbreviated appraisals may be used and loans approved when:

(i) The loan approval official determines that the applicant's equity in the collateral will adequately secure the EM loan(s).

(ii) The abbreviated appraisals are prepared as follows: (A) For real estate—Form FmHA 422–1, "Appraisal Report-Farm Tract," complete the heading of the report; Part 1, Item A; Part 2; Part 3; Part 6; Part 7 and Part 8. The report will be signed and dated by an FmHA authorized appraiser.

(B) For chattel property—Form FmHA 1945–15 will list, identify and show the value of each chattel item. This form will be completed, as applicable, on all EM loans.

**§§ 1945.176—1945.179 [Reserved]**

**§ 1945.180 County Committee certification.**

The County Committee will certify an applicant's eligibility on Form FmHA 440–2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations. Applications will be processed in accordance with § 1910.4(f) of Subpart A of Part 1910 of this chapter.

**§ 1945.181 [Reserved]**

**§ 1945.182 Loan docket preparation.**

(a) *Processing guide.* See Exhibit A of this subpart for Insured Emergency Loan Processing Guide. When a packager has developed the loan docket the County Supervisor will *fully analyze* the docket to assure it is complete and conforms with this EM loan regulation. The County Supervisor will *reverify calculations* in accordance with § 1945.183(a) and insure that the provisions of § 1945.183 of this subpart are met before a final action is taken on the loan request.

(b) *Form FmHA 1940–1, "Request for Obligation of Funds".* A separate Form FmHA 1940–1 will be prepared for each EM loan which has a different interest rate and/or a different repayment period, as determined in accordance with § 1945.168 (a) and (b) of this subpart. Also, on Form FmHA 1940–1, for EM loans approved for borrowers presently indebted for an EM loan, but having new qualifying losses from a subsequent authorized disaster, the new appropriate disaster authorization number will be shown.

(c) *Promissory note.* A separate promissory note will be prepared for each Form FmHA 1940–1 used in approving and obligating each of the EM loans.

(d) *Lease agreement.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement, which are not clearly reflected on the farm and home plan, will be prepared and made a part of the loan docket.

**§ 1945.183 Loan approval or disapproval.**

(a) *Reverification before approval.* Before an EM loan is approved the following actions must be taken: (1) A County Office employee will verify information provided by ASCS on all Forms FmHA 1945–29 in accordance with the FMI. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(2) A County Office employee will verify information provided by the Federal Crop Insurance Corporation (FCIC) regarding any insurance benefits which have been paid or will be paid. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(3) All calculations on Form FmHA 1945–22 and Form FmHA 1945–26 will be checked by a County Office clerical employee (either regular or temporary), using a calculator with a paper tape, to assure that mathematical errors are detected. The County Supervisor or designee will make any corrections necessary in the loan docket, when errors are located. The paper tape will be attached to Form FmHA 1945–22 or Form FmHA 1945–26 as appropriate.

(4) To prevent the duplication of benefits, FmHA and SBA have agreed to coordinate their respective EM and disaster loan program activities as follows; pursuant to the Memorandum of Understanding between FmHA and SBA, Exhibit B of this subpart:

(i) The FmHA County Offices will notify the appropriate SBA Disaster Area Office of all EM disaster farm dwelling loss loan applications received each day for dwelling and/or household contents.

(ii) For dwelling and/or household content applications, the FmHA County Offices will send a copy of each action taken to the appropriate SBA Disaster Area Office. Those actions include: The letter confirming county committee eligibility determination; loan approval, Form FmHA 1940–1; notification of application withdrawal; notification of loan denial; confirmation of request for reconsideration or appeal of loan denial; and final determination on an appeal. *Copies of all written communications from FmHA County Offices to the SBA Area Offices will be sent to the State Director, Attention: Chief, Farmer Programs; and the District Director.*

(iii) Applicants who receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA EM loan assistance. In those cases where an FmHA loan can be approved, FmHA either will reduce the FmHA EM loan by the amount of the SBA loan, or may require SBA to subordinate its lien position(s), or refinance the SBA loan, or EM loan funds. An EM loan will *not* be approved until it is determined that the requirements of § 1945.163(e) of this subpart will be met. When an EM loan is approved, the FmHA County Office will notify the SBA Disaster Area Office pursuant to paragraph (a)(4)(ii) of this section.

(b) *Administrative determination and responsibilities.* When the County Committee certification has been made and the reverification has been completed, and before approving the loan, the loan approval official will determine administratively whether:

(1) The County Committee has certified, in writing, that the applicant is eligible.

(2) The applicant has satisfactory tenure arrangements on the farm(s) to be operated.

(3) The proposed farm and home operations of the applicant are reasonably sound, the purposes are authorized, and the EM loan is needed.

(4) The proposed loan(s) shows a positive cash flow based upon a realistic farm and home plan.

(5) The security requirements can be met.

(6) The certification(s) required of the applicant have been made and are a part of the loan docket.

(7) The loan meets all other FmHA requirements.

(8) The applicant has access to any additional financing needed to continue the farming operation. In making this determination, consideration will be given to whether the applicant qualifies for OL, FO and SW loan assistance, or for a loan(s) from other creditors with or without an FmHA subordination.

(9) The loan risk index is favorable as set out in § 1910.4(c)(2) of Subpart A of Part 1910 of this chapter.

(c) *Loan docket transmittal to the Administrator.* (1) Transmittal memoranda accompanying EM loan dockets requiring National Office review/advice must set forth, as a minimum, the following information:

(i) Proposed loan(s), amount(s), rate(s) of interest, and term(s) of each loan.

(ii) Outstanding FmHA loan(s) balance(s) and the total proposed EM loan(s) indebtedness.

(iii) Status of outstanding FmHA loan(s).

(iv) Brief statements regarding:

(A) Cause and type of disaster losses.

(B) Inability to obtain other suitable credit.

(C) Purposes for which loan funds are to be used.

(D) Overall feasibility and soundness of the planned operation.

(E) Property offered as security for the loan(s).

(v) The State Director's specific positive recommendation that the requested actions be approved.

(2) Loan dockets should not be forwarded to the National Office for review of any action without the State Director's recommendation.

(d) *Loan approval.* (1) The loan approval official will date, sign and distribute Form FmHA 1940–1 in accordance with the FMI and set forth any special conditions of approval, including any special security requirements, in the appropriate section on Form FmHA 1940–1.

(2) The County Supervisor will complete Part III of Form FmHA 1945–29 and forward the form to the appropriate ASCS county office(s).

(e) *Loan disapproval.* The loan approval official must disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. (1) The County Supervisor or loan approval official will notify the applicant by letter of the reason(s) for rejection and will advise the applicant in that letter of appeal rights as set out in Subpart B of Part 1900 of this chapter. The letter will also include any suggestions that could result in favorable action.

(2) The County Supervisor will complete Part III of Form FmHA 1945–29 and forward the form to the appropriate ASCS County Office.

(3) In areas where EM loans are being made under a *major disaster declaration,* and where the FEMA has advised the State Director that Section 408 grants are available, a list of applicants with physical losses, who do not qualify for EM dwelling and/or household content loss loans, will be prepared and sent to the FEMA by County Supervisors at the close of business each week. Those applicants who are not eligible for an EM loan

because they are not farmers as defined in § 1945.154 of this subpart will be considered for a Rural Housing (RH) loan. If they do not qualify for Section 504 Rural Housing assistance, they will be referred to the SBA for disaster housing assistance. The State Director will be advised by the FEMA where to send the list and the State Director will so advise the County Supervisors. The list will be prepared in the following format:

**United States Department of Agriculture**

*Farmers Home Administration*

To:

---

The following is a list of applicants not qualifying for Farmers Home Administration's Emergency loans or Section 504 RH assistance in ——— County during the week ending ———, 19——.

Name and address:

---

County Supervisor

**§ 1945.184 EM loans to FmHA employees.**

FmHA employees and close relatives, as defined in FmHA Instruction 2045–BB, § 2045.1352(f) (available in any FmHA office), may receive EM loss loans subject to the provisions of this subpart and the following conditions, provided they sustained a qualifying loss, meet the eligibility and security requirements and have adequate repayment ability.

(a) If the application is from a County/District/State Office employee, or close relative of such an employee, the application will be submitted to the County Office in the usual manner. The County Office will submit the application package and related material to the District Director for review. After the District Director compiles the necessary information, he/she will attend the County Committee meeting and present the application to the committee for an eligibility determination. He/she will provide guidance, as necessary, to the committee on the determination.

(b) If eligible, the applicant will be notified and the docket will be returned to the District Director for processing. If the applicant is determined ineligible, the State Director will notify the applicant in writing and will provide the applicant all information required by § 1910.6(b) of Subpart A of Part 1910 of this chapter.

(c) The application will be retained in the County Office and will be processed in the same order as other applications. The District Director will be notified when the application is in order for processing and will be responsible for the complete loan processing.

(d) If the loan applicant works outside the county in which the application is filed, the District Director may permit authorized County Office staff to perform the appraisal function. In all other cases, the District Director will appraise the property or have it appraised by a qualified FmHA appraiser from outside the County Office area in which the loan is to be made. The completed loan docket together with the District Director's written recommendation will be submitted to the State Director for consideration of approval.

(e) If the applicant is a District Director, or an employee in the District Office, the State Director will designate another District Director to process the application.

(f) The State Director must, before approving the loan, determine that the applicant has not been and will not be given any advantage because of the FmHA relationship and the making of a loan will not result in a conflict of interest under FmHA Instruction 2045–BB (available in any FmHA office).

(g) If the loan is approved, the borrower's case file will not be maintained or serviced in the office where the borrower is or will be employed. If the property is in the area serviced by the office of employment, the State Director will designate another District or County Office to service the loan.

(h) If the loan involves any type of construction, the inspections for FmHA will be made by the District Director or another member of the District Director's staff as designated by the District Director. Under no circumstances will the employee receiving the loan make the inspections for FmHA.

**§ 1945.185 Actions after loan approval.**

Loan funds must be provided by the County Office to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(a) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check and/or obligation will be cancelled, the County Supervisor will process the cancellation in accordance with the FMI for Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."

(b) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

(c) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan before closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing, unless the change is minor and replacement forms can be readily completed and submitted. In the latter case, a memorandum to that effect will be attached to the revised forms for referral to the Finance Office.

**§§ 1945.186–1945.187 [Reserved]**

**§ 1945.188 Chattel lien search.**

See § 1941.63 of Subpart B of Part 1941 of this chapter for regulations concerning lien searches covering chattels.

**§ 1945.189 Loan closing.**

(a) *Closing loans secured by real estate*—(1) *General.* Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1).

(2) *Security instruments.* Security instruments referred to in paragraph (a) of this section are real estate mortgages or deeds of trust.

(i) FmHA real estate mortgage or deed of trust Form FmHA 427–1 (State), "Real Estate Mortgage for ———," will be used in *all* cases where real estate is taken as security.

(ii) Promissory note(s) will be prepared and completed at the time of loan closing in accordance with the FMI. If insured Rural Housing (RH) funds are advanced simultaneously with EM funds the RH loan will be evidenced by a separate note on the proper form as provided in Subpart A of Part 1944 of this chapter. However, all notes will be

described on the same security instrument(s). When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing.

(iii) When subsequent loans are made, a new security instrument is required only when the existing instruments do not cover all required security or do not secure the subsequent loan.

(iv) A subsequent loan for any authorized purpose may be made without taking new security instruments when the existing security instruments cover all the property required to serve as security for the subsequent loan, the State law and the language of the existing security instruments will permit the future loan advance to be secured by the existing security instruments, and the existing security instruments will provide the same lien priority for the subsequent loan as for the initial loan. A new security instrument will be taken if any one of these requirements is not met.

(3) *Leaseholds.* Security instruments for loans secured by leaseholds will describe security in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), and the following provisions will also apply:

(i) The following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted just before the legal description of the real estate:

"All Borrower's rights, title, and interest in and to the leasehold estate for a term of —— years beginning on ———, 19——, created and established by a certain lease dated ———, 19——, executed by ———, as lessor(s), recorded on ———, 19——, in Book ———, Page —— of the ——— Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:"

(ii) An additional covenant will be inserted in the mortgage to read as follows:

"Borrowers will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of the Borrower's right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect."

(iii) A copy of the lease will be made part of the loan docket.

(4) *Filing or recording security instruments.* The following appropriate actions will be taken after loan closing:

(i) When the original security instrument is returned by the recording official, it will be retained in the borrower's case folder. When the original is retained by the recording official, a conformed copy, showing the date and place of recordation and the book and page number, will be prepared and filed in the borrower's case folder. A conformed copy of the security instrument will be sent to a prior lienholder if a substantial interest is held by that lienholder, or if it is required by a working agreement provision with that lienholder.

(ii) The original deed of conveyance, if any, and a copy of the security instrument will be delivered to the borrower.

(5) *Abstracts of Title.* Any abstract of title will be delivered to the borrower and Form FmHA 140–4, "Transmittal of Documents," will be prepared and a receipt obtained in accordance with the FMI. However, when an abstract is obtained from a third party with the understanding it will be returned, such abstract will be sent directly to the third party and a memorandum receipt will be obtained.

(6) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), if this has not already been done.

(7) *Fees.* The borrower will pay all filing, recording, notary and lien search fees incident to loan transactions from personal or loan funds. When FmHA employees accept cash for these purposes Form FmHA 440–12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is only for paying fees on behalf of the borrower, and is not accepted as partial payment on a loan.

(8) *Supervised bank accounts.* If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter. Loan funds not to be disbursed for specific purposes at loan closing and not needed within 30 days after closing, will not be requested until they are needed. The "Field Office Terminal System" will be used to request future advances at 30 day intervals or as needed. Only in unusual cases will loan funds be kept in supervised bank accounts for more than 60 days. When such funds are placed in an interest bearing supervised bank account, the interest earned will be applied on the EM loan immediately or used for an authorized EM loan purpose, if the planned EM funds are not sufficient to cover all of the planned items.

(b) *Closing loans secured by chattels and crops.* See Subpart B of Part 1941 of this chapter.

(c) *Loan closing review.* Immediately prior to loan closing, the FmHA official responsible for closing the loan(s) will review the file for compliance with Agency regulations.

**§ 1945.190 Revision of the use of EM loan funds.**

(a) *Requirements.* Loan approval officials or their delegates are authorized to approve changes in the purposes for which loan funds were planned to be used, provided: (1) The loan, as changed, is within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect either the feasibility of the operation or the Government's interest.

(4) Such a change is approved in advance of the loan funds being used for the new purpose(s).

(b) *Additional authority.* The State Director may delegate additional authority to approval officials to approve certain kinds of changes in the use of loan funds by issuing a State Supplement describing such changes, provided prior approval is obtained from the National Office.

(c) *Revisions.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on the promissory note. Appropriate changes with respect to the repayment will be made in Table K of Form FmHA 431–2 (and, if needed, on Form FmHA 1962–1) and will be initialed by the borrower. The County Supervisor will also make appropriate notations in the "Supervisory and Servicing Actions" section of Form FmHA 1905–1, "Management System Card—Individual."

**§ 1945.191 [Reserved]**

**§ 1945.192 Loan servicing.**

Loans will be serviced under Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter.

**§§ 1945.193–1945.199 [Reserved]**

**§ 1945.200 OMB control number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0090.

82. Exhibit B–1 to Subpart D of Part 1945 is removed.

## PART 1951—SERVICING AND COLLECTIONS

83. The authority citation for Part 1951 continues to read as follows:

**Authority:** 7 U.S.C 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Account Servicing Policies

**§ 1951.7 [Amended]**

84. Section 1951.7 is amended by removing paragraph (f) and redesignating paragraph (g) as (f).

85. Section 1951.9 is amended by revising the introductory text to read as follows:

**§ 1951.9 Distribution of payments when a borrower owes more than one type of FmHA loan.**

"Distribution" means dividing a payment into parts according to the rules set out in this section. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2, "Farm and Home Plan") and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security."

* * * * *

86. Section 1951.10 is amended by revising the introductory text to read as follows:

**§ 1951.10 Application of payments on production type loan accounts.**

Employees receiving payments on OL, EO, SW codes "24," EM for Subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited by the Finance Office first to unpaid billed interest and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to a portion of interest which accrues during the deferral period and then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2, "Farm and Home Plan") and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security."

* * * * *

87. Section 1951.33 is amended by revising paragraph (b)(3), by redesignating paragraphs (c) and (d) as (d) and (e) respectively, by adding a new paragraph (c) and by revising newly designated paragraphs (d)(2), (d)(5) and (d)(6) to read as follows:

**§ 1951.33 Consolidation and rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes.**

* * * * *

(b) * * *

(3) A feasible plan, as defined in § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter, cannot be developed with the existing repayment schedule, but can be developed with revised repayment terms; and

* * * * *

(c) *Servicing conference.* (1) When a borrower is being considered for a servicing action, the County Supervisor will send a copy of Exhibit A of this subpart to the borrower along with the price list described in § 1924.57(d)(1) of Subpart B of Part 1924 of this chapter for the development of Farm and Home Plans prior to a conference. The County Supervisor will have the following information available at the time of the conference.

(i) A list of the borrower's loan(s) by type.

(ii) The interest rate on each loan.

(iii) The status of each note.

(iv) The principal and interest due.

(v) The schedule of payments on loan(s).

(2) In addition, prior to the conference the County Supervisor will review the borrower's loan docket to determine if:

(i) Form FmHA 1960–12 is completed and up-to-date.

(ii) Form FmHA 1962–1 is completed and up-to-date.

(iii) The borrower has been cooperative and properly accounted for security.

(iv) A subsequent loan is to be considered, evaluate FmHA's security position and equity.

(v) Borrower has any non-essential assets that need to be disposed of.

(d) * * *

(2) Only loans of the same type will be consolidated.

* * * * *

(5) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan (in the case of an OL-limited resource loan it will be the limited resource OL loan rate) or the lowest original loan note rate on any of the original notes.

(6) At the time of the consolidation and/or rescheduling OL loans may be changed to a limited resource rate if the borrower meets the requirements for the limited resource interest rate, a feasible plan (as defined in § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter) cannot be developed at regular interest rates and maximum terms permitted in this section, and a feasible plan can be developed with the limited resource rate.

* * * * *

88. Section 1951.40 is amended by revising paragraphs (b)(3) and (d), and adding a new paragraph (b)(5) to read as follows:

**§ 1951.40 Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.**

* * * * *

(b) * * *

(3) A feasible plan, as defined in § 1924.57 (c)(5) of Subpart B of Part 1924 of this chapter, cannot be developed with the existing repayment schedule, but can be developed with revised repayment terms;

* * * * *

(5) If applicable, the borrower will be considered for conservation easement in accordance with § 1951.42 of this subpart. The conservation easement is only available after all other options including reamortization at regular rates or at limited resource rates will not enable a feasible farm and home plan or any other acceptable plan to be developed for the current and succeeding year in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter. If the use of a conservation easement will correct the problem, then the borrower will be notified of the conservation easement program. No pending appeal or denial of other servicing options will be held until a final determination is made on the conservation easement.

* * * * *

(d) *Interest.* The interest rate will be the current interest rate in effect on the date of reamortization (the date the note is signed), or the interest rate on the original Promissory Note to be reamortized whichever is less. In the case of a limited resource loan, it will be the limited resource FO loan rate or the original loan note rate, whichever is less. At the time of the reamortization, the loan may be changed to a limited resource rate if the borrower meets the requirements for a limited resource interest rate, a feasible plan (as defined in § 1924.57 (c)(5) of Subpart B of Part

1924 of this chapter) cannot be developed at regular interest rates and maximum terms permitted in this section, and a feasible plan can be developed with the limited resource rate.

* * * * *

89. Section 1951.42 is added to read as follows:

**§ 1951.42 Farm debt restructure and conservation set-aside.**

A conservation easement will be considered with reamortization in accordance with § 1951.40 of this subpart and the requirements of this section. Easements can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, upland, or highly erodible land if such land is suitable for the purposes involved and, except in the case of wetland, has been row cropped each year of a three-year period ending on December 23, 1985. This section only applies to farmer program loans closed prior to December 23, 1985. Non Program loan debtors are not eligible to receive any benefits under this section.

(a) *Definitions.— (1) Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(i) Wetland, as defined in § 12.2 of Subpart A of Part 12 of Subtitle A of this title (Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter which is available in any FmHA office),

(ii) Highly erodible land as defined in § 12.2 of Subpart A of Part 12 of Subtitle A of this title (Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter which is available in any FmHA office), or

(iii) Upland this is neither highly erodible land nor wetland and meets any one of the following criteria:

(A) One-hundred year floodplain,

(B) Fish or wildlife habitat of local, regional, State or Federal importance,

(C) Aquifer recharge area of local, regional or State importance,

(D) Area of high water quality or scenic value,

(E) Area containing historic or cultural property,

(F) Area that provides a buffer zone necessary for the adequate protection of a wetland,

(G) Area within or adjacent to a National Park, a National Wildlife Refuge, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a Wild or Scenic River, or U.S. Army Corps of Engineers' land designated for flood control or recreation purposes,

(H) Area that SCS determines contains soil(s) that is generally not suited for cultivation such as soils in Classes V, VI, VII or VIII or SCS's Land-Capability Classification.

(2) *Enforcement authority.* Any agency of the United States, a State, or a unit of local government of a State or a person that is designated by FmHA and specified within an easement to enforce the terms and conditions of that easement.

(3) *Management authority.* Any agency of the United States, a State, or a unit of local government of a State, a person, or an individual that is designated in writing by an enforcement authority to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of an easement or its management plan. The borrower whose land is subject to the easement is an eligible management authority.

(4) *Person.* Any agency of the United States, a State, a unit of local government of a State, or a private or public nonprofit organization.

(5) *Recreational purposes.* These include providing public utilization for both consumption and nonconsumption recreational activities, including hunting and fishing, in a manner consistent with the needs of conserving wildlife resources and their habitats, providing for public safety, complying with applicable laws, regulations, and ordinances and operating the remaining farm enterprise(s).

(6) *Row cropped.* To produce an agricultural commodity by the annual tilling of the land (including one trip planters). This includes land that was in grasses or legumes as part of a commonly practiced row crop rotational system in the local area as well as land that was set aside, diverted or otherwise not cultivated under a program administered by USDA to reduce production of an agricultural commodity.

(7) *Wildlife.* The term includes fish and/or wildlife and means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish mollusk, crustacean, arthropod, coelenterate, or other invertebrae, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.

(8) *Wildlife purposes.* These include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

(b) *Eligibility.* The following steps must be taken to determine if the borrower is eligible for a conservation easement.

(1) *Initial findings.* The County Supervisor must find:

(i) The borrower owns real estate which secures a farmer program loan which was closed before December 23, 1985;

(ii) The borrower is unable to repay the FmHA loan(s) without the easement. This determination will be made by the development of a Farm and Home Plan or any other acceptable plan for the current and coming year in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter;

(iii) The establishment of an easement, in terms of the approximate amount of acres that may qualify, and in combination with other servicing options, if applicable, has the potential to allow the borrower to be current in its payment, i.e., the easement approach is worth exploring in further detail;

(iv) The proposed easement land was row cropped each year of the three-year period ending on December 23, 1985; and

(v) If the land proposed for the easement is within the ASCS Conservation Reserve Program, both the requirements of that program and this section can be met. If these findings cannot be made, the County Supervisor will notify the borrower of the opportunity to appeal the adverse decision on the request for a reamortization.

(2) *Establishing easement review team.* The County Supervisor will establish an easement review team by notifying the appropriate field offices of the SCS, U.S. Fish and Wildlife Service (FWS), Forest Service (FS), adjacent public landowner, and any other entity that may have an interest and qualifies to be an enforcement authority for an easement. The notified parties may in turn notify other eligible entities. SCS, for example, may want to notify the appropriate Soil Conservation District. As part of the notification, the County Supervisor will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on an easement review team.

(3) *Responsibilities of the easement review team.* SCS will lead the easement review team which in every case will be composed of an SCS and FmHA representative plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the members are invited to participate. Any prior lien holder(s) and the borrower will be informed of the site visit and invited to attend. Within thirty days from the site visit, a report will be developed and

provided to the County Supervisor which covers the following items listed below in subparagraphs (i) through (vii). The report will be prepared by the entity that indicated its willingness to be the enforcement authority except in the instance discussed in subparagraph (iii) below. Whenever team members have differing positions on any items to be addressed in the report, these differences will be noted in the report. When no differences exist, written summaries of team members' positions need not be submitted to the preparer of the report unless either requested by the preparer or the team member desires to do so.

(i) The amount of land, if any, which is wetland, upland or highly erodible land and its approximate boundaries. If applicable, recommended boundaries for the easement which go beyond the wetland, upland, or highly erodible land but are minimally necessary for either the establishment of readily identifiable easement boundaries or the efficient implementation of the easement's terms and conditions.

(ii) A finding of whether the land is suitable for conservation, recreation and/or wildlife purposes to include a priority ranking of purposes if the land can be so classified or ranked. Priority will be given to opportunities to benefit wildlife species of Federal Trust responsibility (e.g. migratory birds and endangered species) and their habitats (e.g. wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife purposes. In any ranking of purposes, the team will also give consideration to the types of easements previously established and presently under review within the local area.

(iii) The name of the qualified enforcement authority which is willing to be assigned enforcement authority for the easement as well as the name(s) of any entity(s), if known, that the enforcement authority may use to manage the easement. Whenever more than one qualified entity desires to be the enforcement authority, the report will be prepared by SCS and indicate this fact.

(iv) If appropriate, any special terms or conditions that would need to be placed on the easement given unique or important features of the property which would not be adequately addressed by the standard terms and conditions.

(v) A proposed management plan consistent with the purpose or purposes for which the easement could be established. The management plan will outline the management alternatives for the proposed easement with the enforcement authority's eventual selection of the alternative(s), to be followed being based upon future needs, fund availability, and identification within the management plan. This management plan will specifically recommend whether or not public recreational use and/or public hunting should be allowed on the easement and contain supporting reasons for the recommendation made.

(vi) The recommended term of the easement. See paragraph (c) of this section.

(vii) A recommended value for the land to be subject to the easement. The land will be valued on the basis of the intended easement purpose or purposes if a team member has an established process for determining the value of such purpose or purposes.

(4) *FmHA's review of easement team's report.* Upon receipt, the County Supervisor will review the easement team's report. If the report indicates that an easement is not feasible given the nature of the land or the failure of a qualified entity to volunteer to become an enforcement authority, the County Supervisor will inform the borrower that the easement request has been denied and that the borrower may appeal the adverse decision on the reamortization and the easement. If the report is favorable and more than one qualified entity has indicated its desire to be an enforcement authority, the County Supervisor will select a Federal entity over a non-Federal entity since the easement involves reduction of a Federal debt. If two Federal agencies want to be the enforcement authority, the County Supervisor will, if applicable, select the Federal agency that owns or controls property adjacent to the easement or otherwise the Federal agency whose mission or expertise best matches the priority purpose(s) for which the easement would be established. In selecting between non-Federal entities, the County Supervisor will select the entity that has the greatest capability to enforce the terms and conditions of the easement over the proposed term of the easement.

(c) *Terms of easements.* A conservation easement may be obtained for a period of not less than 50 years. A longer period will be established if recommended by the easement review team on the basis that the land(s) in question would:

(1) Contribute directly to achievement of benefits to species protected by international treaty (e.g., migratory birds);

(2) Contribute directly to protection of habitat or restoration of habitat or benefit to threatened and/or endangered species;

(3) Serve as the site for implementation of habitat improvements as mitigation for impacts associated with a permit, license or project, the duration of which are projected for 50 years or more;

(4) Serve as the site for substantial investment of public or private funds in order to achieve stated resource conservation and/or management purposes;

(5) Be desirable that property be removed from production for a longer period because of the type of land; or

(6) Serve as a significant historical site, ground water recharge area or other significant eligible purpose.

(d) *Processing*—(1) *Valuation of the wetland, upland and highly erodible land to be subject to the easement.* The value of the wetland, upland and highly erodible land to be subject to the easement will be determined by the County Supervisor by completing the following steps:

(i) The County Supervisor will make the following two appraisals of the wetland, upland and highly erodible land.

(A) County Supervisor will appraise the wetland, upland and highly erodible land for its contributory value to the farm on an as is basis. This appraisal would determine *the present market value.*

(B) County Supervisor will have the wetland, upland and highly erodible land appraised for its intended use by a contract appraiser or use the easement review team's value, if the County Supervisor determines the value is established by a qualified real estate appraiser.

(C) The higher value from the two appraisals will be used in implementing paragraph (d)(1)(iii) of this section. The County Supervisor may request assistance in determining the value of the easement by contacting the State Director who may contract for appraisals in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(ii) As formulated below, the County Supervisor will multiply the borrower's total FmHA debt by a fraction composed of the number of borrower's acres securing that total debt over the number of acres of wetland, upland and highly erodible land to be placed under the easement.

(number of wetland, upland and highly erodible acres to be put into easement) divided by number of acres securing total FmHA debt times borrower's total FmHA debt

(iii) The County Supervisor will compare the number resulting from step (i) above with that from step (ii) and use the smaller number. This will be the amount by which the debt will be cancelled. An example of determining the value is as follows:

(A) The farm consists of 160 acres with an FmHA indebtedness of $80,000. It is determined that 40 acres of wetland, upland and highly erodible land will qualify for the conservation easement. An additional 5 acres will be necessaury for the efficient implementation of the easement terms.

(B) County Supervisor makes an appraisal of the 40 acres on its present use and determines the market value to be $16,000.

(C) An appraisal is made on the 40 acres based on its intended use by the evaluation team or a contract appraiser. This value is established at $28,000 and since it is larger than A, is used in the remaining analysis.

(D) 40 acres (number of wetland, upland and highly erodible acres) divided by 160 (number acres total security) times $80,000 $20,000 equals (total FmHA debt).

(E) In this example, the amount of debt to be cancelled is $20,000 which is the smaller of the two ($20,000 vs $28,000).

(2) *Feasibility of debt cancellation.* The County Supervisor will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (d)(1) of this section coupled with other feasible servicing options will be able to develop a feasible Farm and Home Plan or any other acceptable plan for the current and coming year in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter. If the borrower would not be able to develop a feasible plan, the County Supervisor will notify the borrower that the easement has been denied and that the borrower may appeal the adverse decision on the reamortization and the easement. If a feasible plan can be developed, the easement will be processed like any other reamortization and in accordance with the provisions of this section.

(3) *Updating the title opinion.* Title examination will be the same as provided for in § 1807.2 (a) and (b) of Part 1807 of this chapter (FmHA Instruction 427.1 II A and B). A preliminary title opinion will not be required. The final title opinion will cover the period subsequent to recordation of the initial loan mortgage. Costs will either be paid by the borrower or be charged to the borrower's account as a recoverable cost.

(4) *Consent of other lienholders.* If there are any prior or junior lienholders, their consent to the easement must be obtained in writing by the borrower. If this is not possible, the easement will be denied and the borrower informed. The borrower will have no appeal rights for a denial on this basis.

(5) *Identifying the boundaries of the easement.* Unless required by State law or requested by either the enforcement authority or the borrower, a survey of the easement's boundaries will not be required. The requester will be responsible for paying for the survey and the borrower will be responsible if a survey is required by State law. Otherwise, the boundaries of the easement will be delineated by the County Supervisor on an ASCS aerial photo of the farm property. This photo will be filed with the easement's terms and conditions and copies provided to the borrower and the enforcement authority.

(6) *Reaching an agreement with the borrower.* The borrower will be informed of the easement's value, the impact on the remaining FmHA financial obligation, and the terms and conditions of the easement and will be provided a copy of the easement review team's report. If the borrower decides to give the easement, approval will be made by the County Supervisor, the enforcement authority and the borrower by signing Form FmHA 1951–39 or similar form (approved by OGC), so long as the similar form contains no provisions which conflict with this regulation or with the terms of Form FmHA 1951–39. If the borrower requests a modification of the proposed easement, such modification cannot conflict with the purpose or purposes for which the easement would be established. The County Supervisor cannot approve a modification of the proposed easement's terms and conditions without first obtaining the concurrence of the enforcement authority. If the modification is substantial, in terms of the easement review team's recommendations, the members of the easement team must be consulted. Should it not be possible to reach an agreement with the borrower on the easement's terms and conditions, the easement will be denied. The borrower will have no appeal rights for a denial of this basis.

(7) *Notifying Finance Office.* Upon approval of the request, the County Supervisor will send a letter similar to Exhibit H (available in any FmHA office) of this subpart to the Finance Office. The borrower loans that were closed prior to December 23, 1985, that are secured with the real estate on which the easement is obtained will be credited with an amount not to exceed the established value of the easement acres. The amount credited will be applied on the FmHA loan(s) in order of priority of lien on the security and then on any other FmHA debts. The loan may be later reamortized if needed.

(8) *Recording of the easement.* The County Supervisor will record Form FmHA 1951–39 or other appropriate form that has been approved by OGC to comply with State laws. The original easement will be retained in the County Office secured operational file if not required to be recorded. The County Supervisor will provide a copy of the easement to the enforcement authority and to the borrower.

(e) *Violation of terms and conditions.* If the borrower violates any of the terms or conditions of the easement, the account will be liquidated in accordance with § 1965.26(b) of Subpart A of Part 1965 of this chapter. The borrower will also be responsible for all costs incurred in the course of attempting to enforce such terms and conditions including attorney's fees, costs of any litigation, and the cost of repair or restoration of the easement land to be a condition compatible with the conservation purpose(s) for which the easement was established. Should the borrower convey the property subject to the easement during the term of the easement, the successor(s) in interest will also be responsible for similar costs should the successor(s) violate the terms and conditions.

(f) *Responsibilities of the enforcement authority.* The enforcement authority will be named in any approved easement and once named agrees to accept the following responsibilities and duties.

(1) Upon receipt of an FmHA approved easement provide FmHA with a legally binding document acknowledging its acceptance of the role as enforcement authority for that easement.

(2) Monitor compliance with the easement's terms and conditions and its management plan.

(3) Ensure that the easement property is safely maintained and accept all liabilities associated with implementing and carrying out its affirmative responsibilities under the easement's terms and conditions and management plan.

(4) At its discretion, delegate or contract management functions to one or more management authorities, with all associated cost being the responsibility of the enforcement authority. Monitoring compliance with

the terms and conditions of the easement cannot be so delegated or contracted.

(5) For the first five years of the easement's life, report annually to FmHA on the status of compliance with the easement's terms and conditions. Thereafter, this report must be provided every five years. Throughout the life of the easement, the enforcement authority must notify FmHA of any substantial compliance problems or claims, or litigation involving the easement property as such circumstances develop.

(g) *Monitoring compliance.* The enforcement authority is responsible for monitoring compliance with the easement's terms and conditions and management plan. However, when under the circumstances stated in paragraph number 1 of the easement's terms and conditions, Form FmHA 1951–39, the grantor needs the government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the County Supervisor. In order to provide the requested written authorization, the County Supervisor must determine that the request does not violate the terms and conditions and must receive the written concurrence of the enforcement authority. In so doing, the County Supervisor should consult with the State Director and OGC, as necessary.

90. Section 1951.44 is amended by revising the introductory text and by revising paragraphs (a)(3), (b)(1)(ii) introductory text, (b)(1)(ii)(A), (c)(8) and (j)(1) to read as follows:

**§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF and EE loans.**

All borrowers are expected to repay their loans according to planned repayment schedules. However, borrowers may request a deferral at the FmHA County Office when circumstances occur which will not permit borrowers to pay as scheduled. Loan deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, reamortization or debt set-aside, if available, in accordance with this subpart will not provide the cash flow needed to service the debt, operate the farm and provide family living expenses. A conference will be set up with the borrower in accordance with § 1951.33(c) of this subpart.

(a) * * *

(3) Unduly impaired standard of living: A condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations and cooperatives do not have family living expenses but the partners, joint operators, stockholders and members who operate the farm do have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

* * * * *

(b) * * *

(1) * * *

(ii) Unplanned, but essential, farm expenses and/or, in the case of individual borrowers and the partners, joint operators, stockholders and members who operate the farm, essential family living expenses. Unplanned expenses are those which were not listed in the most current farm plan of operation and can be paid from the authorized sale of chattel security. Proceeds from such sales can be used for unplanned purposes only if FmHA releases such proceeds in accordance with Subpart A of Part 1962 of this chapter governing disposition of chattel security. These unplanned expenses may result from:

(A) Accident, death, illness or injury to an individual borrower or dependent member of the borrower's family (stockholders, members, partners, or joint operators of an entity borrower are excluded, except when that stockholder, member, partner, or joint operator is the operator of the farming operation); or

* * * * *

(c) * * *

(8) Demonstrated by a realistic farm plan of operation, cash flow or other financial projections acceptable to FmHA that during the deferral period, the borrower can:

(i) Pay essential family living expenses (for individual borrowers or for the partners, joint operators, stockholders and members who operate the farm) and/or farm operating expenses (for partnerships, corporations and cooperatives living expenses are excluded):

(ii) Repay any loans made during the deferral period for operating and family living expenses;

(iii) Provide for any essential capital purchases and improvements, including those for machinery replacement;

(iv) Meet all installments owed other creditors; and

(v) Meet installments on FmHA debts not deferred.

* * * * *

(j) *Processing.* (1) If the deferral is approved, all loans being deferred will be rescheduled, reamortized or consolidated as applicable. Interest that has accrued will be added to the principal as of the date the new note(s) will be signed. All FmHA loans must be current on or before the date the note is signed except for vouchered recoverable cost items that cannot be rescheduled. All delinquent loans will be rescheduled, reamortized, consolidated or deferred as applicable to bring the account current. The County Supervisor will contact the Finance Office to find out the amount of interest and principal owed on the date the new note(s) will be signed. This date will be the date of the beginning period of the deferral. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral. The County Supervisor will determine the amount of interest that will accrue during the deferral period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on the promissory note as the scheduled installment for the remaining period of the loan. The FMI for Form FmHA 1940–17 has examples (IV, V, and X) which explain this. The Finance Office will apply the payments made on the note in accordance with this subpart. The following addendum will be typed, completed, signed by the borrower and attached to the promissory note:

**Addendum for Deferred Interest**

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of ____ percent. This agreement amends and attaches to the above note. $_____ of each regular payment on the note will be applied to the interest which accrued during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I agree to sign a supplementary payment agreement and make additional payments if during the deferral period I have a substantial increase in income and repayment ability.

_____

Borrower

* * * * *

91. Exhibit A of Subpart A of Part 1951 is added to read as follows:

**Exhibit A to Subpart A—Notice of Farmer Program Loan Servicing Conference (Used by the County Supervisor to inform the borrower of a loan servicing conference)**

*United States Department of Agriculture*

*Farmers Home Administration*

*(Insert Address)*

(Date)
(Borrower's Name)
(Borrower's Address)
(_____)
(_____)

Dear _____:

In order to evaluate your request for loan servicing, please bring the following information to our conference on _____:

1. A list of your actual farm and family living expenses for each of the past 3 years.

2. A list of your actual farm production, showing prices received and quantity sold, for each of the last 3 years.

3. A list of your actual off-farm income for each of the last 3 years.

4. A completed Farm and Home Plan for your next production year and a completed plan for 5 years from now.

I have enclosed two blank Farm and Home Plans and a copy of the prices which we believe can be realistically expected in the coming years.

You should be able to obtain the information from various sources including income tax records, accounting records and actual cash flows. If you are unable to prepare this information you should contact this office at once.

If you have requested a deferral of your loan payments, I will first consider whether the payments on your FmHA debt can be rearranged using other servicing tools, to achieve a positive cash flow. Also, you will have to provide information at the conference to show that you need the deferral because of circumstances beyond your control (such as loss of off-farm income, illness, natural disaster or economic factors) and that you will be able to begin making payments after the deferral period is over. You must also provide information to show that your standard of living will be impaired if you make your presently scheduled payments and that you have attempted to adjust debts owed to your other creditors.

We will discuss all of these items of your conference.

I have scheduled your conference for _____ at ___ am/pm.

Sincerely,
County Supervisor

## PART 1955—PROPERTY MANAGEMENT

92. The authority citation for Part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

93. Section 1955.10 is amended by revising the introductory text and by revising paragraph (c)(1)(ii) to read as follows:

**§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.**

Voluntary conveyance is a method of liquidation by which title to security is transferred to the government. FmHA will not make a demand on a borrower to voluntarily convey. For borrowers other than Farmer Programs a voluntary conveyance should be accepted only after all available servicing actions outlined in the respective program servicing regulations have been used or considered and it is determined the borrower will not be successful, and it is determined to be in the Government's best financial interest. For Farmer Program borrowers who have not received Form FmHA 1924–25 and Form FmHA 1924–26, a voluntary conveyance should be accepted only after all available servicing actions outlined in the respective program servicing regulations have been used or considered and it is determined the borrower will not be successful, and it will be in the Government's best financial interest to accept the voluntary conveyance. For Farmer Program borrowers who have received Forms FmHA 1924–25 and 1924–26, a voluntary conveyance should be accepted when it is determined to be in the Government's best financial interest. Rejection of a voluntary conveyance offer made before acceleration is appealable. The borrower should also have been encouraged to transfer or sell the property (subject to any prepayment restrictions of the respective loan program). The borrower will be informed by the servicing official of apparent equity in the property, if any. Before a voluntary conveyance from a Farmer Program borrower can be accepted, the borrower must be sent Form FmHA 1924–14, "Notice—Farmer Program Servicing Options Including Deferrals and Borrower Responsibilties." This form will not be sent to borrowers who received unauthorized assistance as determined under Subpart L of Part 1951 of this chapter and will not be sent to borrowers whose accounts have been accelerated.

* * * * *

(c) * * *

(1) * * *

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) may be made while title to the property is held by the Government in accordance with § 1955.67 of Subpart B of Part 1955 of this chapter.

* * * * *

94. Section 1955.15 is amended by revising paragraphs (d)(2)(iv) and (d)(3) to read as follows:

**§ 1955.15 Foreclosure by the Government of loans secured by real estate.**

* * * * *

(d) * * *

(2) * * *

(iv) If a borrower has both Farmer Program and SFH loans:

(A) When the borrower's dwelling financed with an SFH loan(s) is secured by the same farm real estate as the Farmer Program loan(s) *(dwelling located on the farm)*, the SFH loan(s) must be accelerated at the same time the borrower is sent Form FmHA 1924–25. One appeal hearing and one review will be held for both adverse decisions.

(B) When the borrower's SFH loan-financed *dwelling is located on a nonfarm tract* the SFH will not be accelerated simultaneously with sending out Form FmHA 1924–25 if the requirements of § 1965.25(d) or § 1965.26(c)(2) of Subpart A of Part 1965 of this chapter are met.

(3) *Offers by borrower after acceleration of account.* After the account is accelerated, the servicing official will accept no payment for less than the unpaid loan balance subject to the following requirements:

(i) Payments must be accepted if State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement.

(ii) Payments will be accepted if there is no remaining security for the debt (real estate and chattel).

(iii) If the borrower is in the process of selling the security or nonsecurity, payments may be accepted unless State law would require the acceleration to be reversed; a State supplement will be issued on this. In States where payments cannot be accepted unless the acceleration is reversed, the payments will be placed in a supervised bank account (SBA). Such payments must remain in the SBA until the liquidation is completed at which time they will be applied to the account.

(iv) If payments are mistakenly credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenant in the real estate instruments will result

and FmHA may proceed as though no such payment had been made. The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). For Farmer Program cases, the acceleration notice explains how and when the borrowers can pay their accounts in full; offers will be handled under the appropriate servicing regulation within the time allowed in the acceleration notice. For all other cases, the approval official will decide whether or not the borrower's offer will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in the servicing regulations for the type loan(s) involved. If an offer from the borrower is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. In all cases the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be advised when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

(A) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired.

(B) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(C) For MFH loans with rental assistance, after acceleration and any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim the tenants will continue rental payments in accordance with their lease.

(v) Whenever payments are accepted after acceleration and the acceleration is *not* reversed, the maximum amount which the Government may bid at the foreclosure sale as set forth in paragraph (d)(5) of this section will be adjusted accordingly.

* * * * *

## Subpart B—Management of Property

95. Section 1955.53 is amended by revising paragraph (n) to read as follows:

**§ 1955.53 Definitions.**

* * * * *

(n) *Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in paragraph (a) of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within one year after acquisition.

* * * * *

96. Section 1955.63 is amended by changing the reference in the last sentence of paragraph (c) from "1955–D" to "2024–A" and by revising paragraph (a) to read as follows:

**§ 1955.63 Suitability determination.**

* * * * *

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classified as "suitable" or "surplus." Properties acquired under the CONACT which are originally classified as suitable may be reclassified as surplus because of physical damage which occurs or change in economic conditions which affect its suitability for program purposes; and, if not sold within one year after acquisition, it must be declared surplus. If the property is offered for sale as surplus and the purchaser is eligible for FmHA program assistance, it may be reclassified as suitable if it is in fact suitable for program purposes.

* * * * *

97. Section 1955.64 is amended by revising paragraphs (a)(3) and (c) to read as follows:

**§ 1955.64 Securing, maintaining, and repairing inventory property.**

* * * * *

(a) * * *

(3) *Farm Property.* Only the farm service buildings and facilities typically essential for the type of farming in the area will be repaired, renovated, and/or improved as necessary to place in saleable condition. However, any farm property that is listed or eligible for listing on the National Register of Historic Places will be repaired as necessary to protect its historic integrity after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding the repairs. Also, if any farm property presents a health or safety hazard, necessary steps will be taken to remove the hazard after consultation with appropriate government agencies having related expertise or jurisdiction. Conservation of soil, water, and forest resources will be considered and actions will be taken to correct severe problems upon advice of the Soil Conservation Service (SCS) through the development of a conservation plan for the farm property. The County Supervisor will request that the SCS identify the location of any highly erodible land and recommend specific conservation practices to control erosion. The County Supervisor will carry out those conservation practices that are essential to preserve and protect the property and to place it in saleable condition. Any differences between FmHA and SCS regarding the need for a certain practice(s) will be resolved in the manner indicated in § 1955.137(c)(2) of Subpart C of Part 1955 of this chapter. Chattel property will be managed as outlined in § 1955.80 of this subpart.

* * * * *

(c) *Contracting authority.* All contracts for securing, maintaining, and repairing inventory property will be handled in compliance with FmHA Instruction 2024–A (available in any FmHA office), subject to the limitations assigned to each position in FmHA Instruction 2024–A. Costs incurred under this section will be charged to the inventory account as nonrecoverable costs.

98. Section 1955.66 is amended by revising paragraphs (c)(2)(i), (c)(2)(ii) and (g) to read as follows:

**§ 1955.66 Lease of real property.**

* * * * *

(c) * * *

(2) * * *

(i) The owner-operator(s) of the property at the time it was taken into inventory will be given the first opportunity to lease, and will be allowed to choose a lease either with or without an option to purchase. The County Supervisor will notify the previous owner-operator(s), by certified letter, return receipt requested, of the availability of the property for lease with or without an option to purchase as soon as it becomes available for lease. The previous owner-operator will be given thirty days to contact the county office if interested in leasing, with or without an option to purchase. If the previous owner-operator(s) does not contact the county office within thirty days from the date he/she/the entity was notified of the availability of the property for lease, or has indicated that he/she/the entity is not interested in leasing the property, the previous

owner-operator(s) will not be given any further special consideration for leasing the property. The County Supervisor will then notify the owner(s) (if different from the owner-operator) of the property at the time it was taken into inventory of the availability of the property for lease, in the same manner as the owner-operator was notified. If the previous owner(s) does not contact the county office or indicates that he/she/the entity is not interested in leasing the property, the previous owner(s) will not be given any further special consideration for leasing the property. The County Supervisor will then notify the operator(s) (if different from the owner-operator) of the property at the time it was taken into inventory of the availability of the property for lease, in the same manner as the owner-operator was notified. If the previous operator(s) does not contact the county office or indicates that he/she/the entity is not interested in leasing the property, the previous operator(s) will not be given any further special consideration for leasing the property. The County Supervisor must determine that the previous owner-operator, owner or operator has sufficient experience, management skills and financial resources to assure a reasonable prospect of success in the farming operation. In making this determination, the County Supervisor will evaluate the previous owner-operator's, owner's or operator's financial and production records and determine whether or not the failure or the previous operation was caused by factors beyond the previous owner-operator's, owner's or operator's control such as natural disasters, inflated farm prices, high interest rates and prices received that were below reasonable costs of production. If this determination is adverse to the previous owner-operator, owner or operator, the County Supervisor will notify, in writing, the previous owner-operator, owner or operator of the decision and will give the previous owner-operator, owner or operator the opportunity to appeal the determination in accordance with Subpart B of Part 1900 of this chapter. No lease will be signed with any prospective lessee until this appeal is concluded. If the appeal is concluded in FmHA's favor, the provisions of paragraph (h) of this section on advertising will be followed. If there is more than one prospective lessee in this category, the County Committee will select, by majority vote, the one who has the best chance for success in operating the farm and exercising the option to purchase, if any.

(ii) If the previous owner-operator, owner or operator is not interested in leasing the property, the County Supervisor will give preference to operators (as of the time immediately before a lease is entered into) of not larger than family-size farms who want to lease *with* an option to purchase. The County Supervisor must determine which of these prospective lessees can fulfill the terms of the lease, as required by paragraph (c)(1) of this section. If there is more than one prospective lessee in this category, the County Committee will select, by majority vote, the one who has the best chance for success in operating the farm and exercising the option to purchase.

* * * * *

(g) *Lease with option to purchase.* For inventory property *only*, a lessee may be given the option to purchase. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the market value except for farm property. The purchase price (option price) for all farm property to be leased with option to purchase to eligible farm applicants will reflect the average annual income that may be reasonably anticipated to be generated from farming such property. Therefore, the option price will be the capitalization value of the farm as set forth in FmHA Instruction 422.1 (available in any FmHA office). The capitalization value will be supported by a current appraisal on Form FmHA 422–1, "Appraisal Report-Farm Tract." A lease with option to purchase farm property will normally not exceed 1 year, but may in justifiable cases be for a period not longer than 3 years. The lease payments will not be applied toward the purchase price.

* * * * *

99. Section 1955.67 is amended by redesignating paragraph (b) as (c), revising paragraph (a), and adding a new paragraph (b) to read as follows:

**§ 1955.67 Payment of liens.**

(a) If real estate was acquired subject to a lien, the FmHA official who approved the acquisition may authorize the payment of installments that may include escrow payments to the prior lienholder for taxes, if the property is taxable. Payment will be made according to FmHA Instruction 2024–P (available in any FmHA office) by preparation of SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. The payment will be charged to the inventory account as a nonrecoverable cost.

(b) If the State Director determines that it is not in the best interest of the Government to continue payment of installments to a prior lienholder, he/she will:

(1) Convey the property to the lienholder if the lienholder accepts it *or*,

(2) Discontinue payments to the lienholder and allow the lien to be foreclosed.

* * * * *

**Subpart C—Disposal of Inventory Property**

100. Section 1955.103 is amended by revising paragraph (r) to read as follows:

**§ 1955.103 Definitions.**

* * * * *

(r) *Surplus Property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in paragraph (d) of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within one year after acquisition.

* * * * *

101. Section 1955.107 is amended by revising the introductory text to read as follows:

**§ 1955.107 Sale of surplus property (CONACT).**

Except where a lessee is exercising the option to purchase under § 1955.73 of Subpart B of this part, concerning dwelling retention, surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable property which has been in inventory for one year must be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the authorized official and sold on eligible terms. The basis for this redetermination must be documented in the running record.

* * * * *

102. Section 1955.108 is amended by redesignating paragraphs (b) through (h) as (c) through (i) and adding a new paragraph (b) to read as follows:

**§ 1955.108 Processing and closing (CONACT).**

* * * * *

(b) *Credit sale approval authority for Farmer Programs.* County Supervisors, District Directors, and State Directors

are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office). County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of FmHA Instruction 1901–A (available in any FmHA office).

* * * * *

103. Section 1955.109 is amended by revising paragraphs (b) and (c)(1), (c)(2) and (c)(3) to read as follows:

**§ 1955.109 Disposition of farm property.**

* * * * *

(b) *Highly erodible land.* Leases (with an option to purchase) of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the lease, conservation practices specified by the SCS and approved by FmHA as a condition for sale. Refer to § 1955.137(c) of this subpart for implementation requirements.

(c) * * *

(1) The owner-operator(s) of the property at the time it was taken into inventory will be given the first opportunity to purchase. The County Supervisor will notify the previous owner-operator, by certified letter, return receipt requested, of the availability of the property for sale as soon as it becomes available for sale. The previous owner-operator(s) will be given thirty days to contact the county office if interested in purchasing the farm. The purchase price will be as determined in § 1955.106(c) of this subpart. If the previous owner-operator does not contact the county office within thirty days from the date he/she/the entity was notified of the availability of the property for sale, or has indicated that he/she/the entity is not interested in purchasing the property, the previous owner-operator(s) will not be given any further special consideration for purchasing the property. The County Supervisor will then notify the owner(s) (if different from the owner-operator) of the property at the time it was taken into inventory of the availability of the property for sale, in the same manner as the owner-operator was notified. If the previous owner(s) does not contact the county office or indicates that he/she/the entity is not interested in purchasing the property, the previous owner(s) will not be given any further special consideration for purchasing the property. The County Supervisor will then notify the operator(s) (if different from the owner-operator) of the property at the time it was taken into inventory of the availability of the property for sale, in the same manner as the owner-operator was notified. If the previous operator(s) does not contact the county office or indicates that he/she/the entity is not interested in purchasing the property, the previous operator(s) will not be given any further special consideration for purchasing the property. The property will be offered on eligible terms (if the previous owner-operator(s) is eligible) and a credit sale processed in accordance with § 1955.106(d), or for cash or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). If there is more than one prospective purchaser in one of these categories, the County Supervisor will select the purchaser who made the first acceptable offer to purchase the property.

(2) If the previous owner-operator(s), owner(s) or operator(s) of the property is not interested in purchasing the property, the previous owner-operator(s), owner(s) or operator(s) will be given the opportunity to lease, with or without an option to purchase, in accordance with § 1955.66(c)(2)(i) of Subpart B of this part.

(3) If the previous owner or operator of the property is not interested in purchasing or leasing the property, the property will be sold in accordance with §§ 1955.106 or 1955.107 of the subpart, as applicable or leased in accordance with § 1955.66(c)(2) (ii), (iii) and (iv) of Subpart B of this part.

104. Section 1955.123 is amended by revising paragraph (a) to read as follows:

**§ 1955.123 Sale procedures (chattel).**

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] Credit sales to ineligible purchasers may be offered on terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed five years. The interest rate for ineligible purchasers will be the current ineligible interest rate for Farmer Program property set forth in Exhibit B of FmHA Instruction 440–1 (available in any FmHA office). Forms FmHA 431–2, Form FmHA 440–32, "Request for Statement of Debts and Collateral," or any other financial statement considered appropriate may be used to show financial capability. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office). The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of FmHA Instruction 1901–A (available in any FmHA office).

* * * * *

## PART 1962—PERSONAL PROPERTY

105. The authority citation for Part 1962 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Servicing and Liquidation of Chattel Security

106. Section 1962.4 is amended by revising paragraph (c) to read as follows:

**§ 1962.4 Definitions:**

* * * * *

(c) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

* * * * *

107. Section 1962.6 is amended by revising paragraph (c)(2)(ii) to read as follows:

**§ 1962.6 Liens and assignments on chattel property.**

* * * * *

(c) * * *

(2) * * *

(ii) Obtain assignments from selected borrowers on Form FmHA 1962–8, "Upland Cotton, Rice, Wheat and Feed Grain Programs—Assignments," or a form designated by ASCS, if Form FmHA 1962–8 is not acceptable to them.

* * * * *

108. Section 1962.13 is amended by revising the introductory text to read as follows:

**§ 1962.13 Lists of borrowers given to business firms.**

Lists of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as salesbarns and warehouses, that buy chattels or crops to sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards. Potential purchasers' names are listed on the borrower's Form FmHA 1962–1, "Agreement For the Use of Proceeds/Release of Chattel Security."

* * * * *

109. Section 1962.17 is amended by revising paragraphs (a)(2), (b)(1), (b)(2 ) introductory text, (b)(2)(i)(A), (b)(4) and (b)(5) to read as follows:

**§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.**

(a) * * *

(2) Section 1924.57 of Subpart B of Part 1924 of this chapter requires that there must always be a current Form FmHA 1962–1 in the file of a borrower with a loan secured by chattels. If a borrower asks FmHA to release proceeds from the sale of chattels and there is not a current Form FmHA 1962–1 in the file, and the borrower's request for release is denied, the borrower must be given a Form FmHA 1924–14, written explanation of the reasons for denial, and an opportunity for an appeal in accordance with Subpart B of Part 1900 of this chapter. The appeal hearing must be held within 20 days of the denial unless the borrower requests a longer time. Immediately upon determining that the borrower does not have a Form FmHA 1962–1 in the file, the County Supervisor should also begin working with the borrower to develop one.

(b) * * *

(1) County Supervisors are authorized to approve or disapprove dispositions of FmHA chattel security in accordance with this subpart. The County Supervisor, with the assistance of the borrower, will complete Form FmHA 1962–1 in accordance with the Forms Manual Insert (available in any FmHA office) to show how, when, and to whom the borrower will sell, exchange, or consume security and use sale proceeds (include milk sale proceeds) and insurance proceeds derived from the loss of security. This includes, for example, sale proceeds on hand and crops in storage. When proceeds from the disposition of security are to be used to pay essential family living or farm operating expenses, County Supervisors must approve the disposition.

(2) Under all circumstances, sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to prior lienholder and which come to FmHA can be used as follows:

(i) * * *

(A) The form must provide for releases of proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business so that the borrower can pay essential family living and farm operating expenses. Essential expenses are those which are basic, crucial or indispensable. This will not include expenses for expansion of the operation. Excess proceeds must be applied to the FmHA debt or used to preserve existing security. If the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business will not generate enough income to meet all essential family living and farm operating expenses, the borrower may sell other chattel security (such as machinery, equipment, or foundation livestock) to meet those expenses.

* * * * *

(4) If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received as shown Form FmHA 1962–1, the borrower will promptly notify the County Supervisor. Likewise, if the borrower sells more or less than the planned quantity, due to higher or lower than anticipated crop yields or livestock production numbers, or if the borrower sells at a time other than that listed on Form FmHA 1962–1, the borrower will promptly notify the County Supervisor. If the borrower sells security to a purchaser not listed on the Form FmHA 1962–1, the borrower must immediately notify the County Supervisor of what property has been sold and of the name and business address of the purchaser. Such notification may be by telephone to the County Office, by letter, by visit to the County Office, or any other method the borrower chooses. Changes that would result in a major change in the borrower's operation will almost always require a visit to the county office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form FmHA 1962–1. If a revision cannot be agreed upon, see § 1924.57(d)(2) of Subpart B of Part 1924 of this chapter.

(5) If a borrower wants to dispose of chattel security which is not listed on Form FmHA 1962–1 or wants to dispose of chattel security in a way not listed in the "How" section or wants to use proceeds in a way not listed in the "Use of Proceeds" section on Form FmHA 1962–1, the borrower must obtain FmHA's consent before the disposition or before the proceeds are used. FmHA *must* give consent if the change is necessary for the borrower to meet essential family living and farm operating expenses. FmHA *must* also give consent if the conditions set out on the form and in paragraph (b)(2) of this section are met. The borrower may obtain prior consent by telephoning the county office, by letter, by visiting the county office or by any other method the borrower chooses. When revisions are agreed to over the telephone, the County Supervisor *must* revise the Form FmHA 1962–1 contained in the borrower's case file, initial and date the change, and mark the form "Revised." The County Supervisor will then either write to the borrower and send a copy of the "Revised" form to the borrower asking the borrower to date and initial the change and return the form to the county office, or the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the county office. Changes that would result in a major change in the borrower's operation will almost always require a visit to the county office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form FmHA 1962–1. If consent is not given, see § 1924.57 (d)(2) of Subpart B of Part 1924 of this chapter.

* * * * *

110. Section 1962.40 is amended by revising the introductory texts of paragraphs (b) and (b)(4) and by revising paragraphs (b)(3) to read as follows:

**§ 1962.40 Liquidation.**

* * * * *

(b) *Involuntary liquidation.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of the subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director

determines that a borrower has violated the terms of FmHA's note(s) security instrument(s) or other loan agreements, liquidation of the account(s) will be accomplished as quickly as possible under this section. In farmer program loan cases, borrowers must receive Forms FmHA 1924–14, "Notice—Farmers Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," 1924–25, "Notice of Intent to Take Adverse Action," and 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate. The forms will be sent certified mail (return receipt requested) and regular mail on the same day. Delinquent borrowers will be handled in accordance with § 1924.71 of Subpart B of Part 1924 of this chapter. When civil or criminal action is recommended, the case will be handled in accordance with § 1962.49 of this subpart.

* * * * *

(3) *Agreement with borrower.* After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account immediately by (i) selling the security in accordance with § 1962.41 of this subpart, (ii) transferring the security in accordance wtih § 1962.34 of this subpart, (iii) conveying the security to FmHA under Subpart A of Part 1955 of this chapter, or (iv) refinancing the debt with another lender, the borrower is allowed 120 days to accomplish such action after the borrower has indicated the action to be taken on Form FmHA 1924–26 and has returned the form to the County Supervisor. Additional time will not be allowed for voluntary liquidation before acceleration.

(4) *No agreement with borrower.* If the borrower is not willing to voluntarily liquidate, or fails to carry out a voluntary liquidation within the time set out in paragraph (b)(3) of this section, the borrower's account will be immediately accelerated (see paragraph (b)(4) (i) and (ii) of this paragraph). The County Supervisor will then attempt to repossess the security in accordance with § 1962.42 of this subpart. If this is not possible, the case will be referred for civil action in accordance with § 1962.49 of this subpart. Unmatured installments will be accelerated as follows:

* * * * *

111. Section 1962.41 is amended by revising paragraph (e) to read as follows:

**§ 1962.41 Sale of chattel security on EO property by borrowers.**

* * * * *

(e) *Unpaid FmHA Debt.* If the sale results in less than full payment of the FmHA debt, a release of liability of the borrower can be processed provided the County Committee has recommended release of liability with the following comment on the County Committee Certification:

"In our opinion (name of Borrower and any co-signer) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion of the transaction."

If a release from liability cannot be granted, the borrower will be sent a letter similiar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). The account will then be considered for debt settlement.

## PART 1965—REAL PROPERTY

112. The authority citation for Part 1965 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

113. Section 1965.11 is amended by revising paragraph (c)(2)(i)(C), (c)(2)(ii)(A) and (B) and (c)(3) to read as follows:

**§ 1965.11 Preservation of security and protection of liens.**

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) Loans may be reamortized without regard to loan limits to include protective advances for payment of prior lienholder(s) when authorized on an individual case basis by the National Office. When continuation with reamortization to include protective advances for payment of prior lienholder(s) is recommended the case file with documentation of all facts of the situation necessitating protective advances, efforts made to obtain a new participating lender, and justification for reamortizing will be submitted to the National Office.

(ii) * * *

(A) *Making a bid.* Bidding will be completed in accordance with § 1955.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA enters a bid, actions will be taken in accordance with §§ 1955.15(g) and 1955.18 of Subpart A of Part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report. Unsatisfied farmer program loan accounts will be handled in accordance with § 1955.18(f) of Subpart A of Part 1955 of this chapter.

* * * * *

(3) *Foreclosure sale subject to FmHA mortgage.* When FmHA learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower Form FmHA 1924–14. If the borrower contacts FmHA and wants to apply for servicing relief, the request will be processed in accordance with the appropriate FmHA regulation. If the junior lien is foreclosed and the property is sold subject to the FmHA mortgage, the borrower will be sent Forms FmHA 1924–14, 1924–25 and 1924–26. The Form FmHA 1924–25 will list all conditions constituting default, such as delinquency and failure to operate the farm as reasons for accelerating the account. Acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Part 1955 of this chapter.

* * * * *

114. Section 1965.12 is amended by revising the introductory text and paragraphs (a)(8) and (b)(2)(ii)(B) to read as follows:

**§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.**

See § 1965.34(e) of this subpart for requirements concerning subordinations of non-program (NP) loans. In

accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the subordination in any crop year, the individual or entity shall be ineligible for a subordination for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants for subordinations will attest on Form FmHA 465–2, "Application for Partial Release, Subordination, or Consent," that as an individual, or that its members, if an entity have not been convicted of such crime after December 23, 1985. If an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for subordination for this reason is not appealable.

(a) * * *

(8) The amount of any prior lien plus the balance of the FmHA debt will not exceed the present market value of the real estate security. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total real estate security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 SFH loans subject to recapture, FmHA indebtedness will be determined in accordance with Subpart I of Part 1951 of this chapter.

(b) * * *

(2) * * *

(ii) * * *

(B) When a farm tract secures other type(s) of FmHA loan(s) currently authorized, the other lender's funds may be used for any purposes for which that type loan is authorized. If the farm tract secures only type(s) of FmHA loan(s) not currently authorized, the other lender's funds may be used for any purpose for which an FO loan can be made, regardless of the requirement of § 1965.12(a)(7) of this subpart.

* * * * *

115. Section 1965.13 is amended by revising paragraph (f)(4)(ii) to read as follows:

**§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.**

* * * * *

(f) * * *

(4) * * *

(ii) For other than SFH loans, applied on debts owed creditors other than FmHA to the extent needed to establish a basis for continuation of the other creditor's account, if the following requirements are met:

(A) A feasible farm and home plan will be developed in accordance with § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter. Voluntary debt adjustment will be utilized, as appropriate, in accordance with Subpart A of Part 1903 of this chapter.

(B) Proceeds will not be used to pay current crop/operating year family living and/or operating expenses, as developed in the Annual Plan in accordance with § 1924.57(b) of Subpart B of Part 1924 of this chapter.

* * * * *

116. Section 1965.17 is amended by revising paragraph (a) to read as follows:

**§ 1965.17 Lease of security.**

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with § 1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification to the National Office. No action will be taken to disapprove or to approve a lease if the lease is for less than three years and contains no option to purchase; however, if the lease of security involves the borrower ceasing to operate the farm, action will be taken in accordance with § 1965.26(d) of this subpart.

* * * * *

117. Section 1965.25 is amended by revising the introductory texts of paragraphs (a) and (d) to read as follows:

**§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.**

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattels, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. For any loans made for operating purposes, a real estate lien may be released only if the real estate was considered "additional" security when the loan was made. For the purpose of this paragraph, real estate securing any loan made for real estate purposes is not considered "additional security" unless it is a tract of land this is in addition to the farm real estate. Additional security for a SFH non-farm loan is real estate in addition to the tract on which the dwelling is located. Before a release can be granted, there must be reasonable assurance that orderly payments can be made on the FmHA indebtedness, and;

* * * * *

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a *junior* lien on the borrower's dwelling financed with a SFH loan and located on a *nonfarm tract* when the junior lien was taken as additional security for a farmer program loan(s), and if the SFH security were liquidated there would be no proceeds in excess of the SFH debt to apply to the farmer program loan(s). This authority does not extend to valueless judgement liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value;

* * * * *

118. Section 1965.26 is amended by revising paragraphs (a)(2), (b), (c) and (d), and by revising the introductory texts of paragraphs (e) and (f) to read as follows:

**§ 1965.26 Liquidation action.**

(a) * * *

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The

appraisal will be completed by an authorized FmHA employee in accordance with FmHA Instruction 422.1 (available in any FmHA office) and placed in the borrower's case file. If a qualified FmHA appraiser is not available, the State Director may obtain an appraisal outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that a borrower has violated the terms of FmHA's note(s), security instrument(s) or other loan agreements, liquidation of the account(s) will be accomplished as expeditiously as possible. In farmer program cases, borrower must receive Forms FmHA 1924–14, FmHA 1924–25, and FmHA 1924–26, and *any appeal must be concluded before any adverse actions can be taken.* The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate. The forms will be sent by certified mail (return receipt requested) and by regular mail on the same day. Delinquent borrowers will be handled in accordance with § 1924.71 of Subpart B of Part 1924 of this chapter.

(1) *General.* After the borrower is notified that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account immediately by one of the methods indicated in paragraph (a)(1) of this section, the borrower is allowed 120 days to accomplish such action after the borrower has indicated the action to be taken on Form FmHA 1924–26 and has returned the form to the County Supervisor. If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine the present market value. The appraisal will be completed by an authorized FmHA employee in accordance with FmHA Instruction 422.1 (available in any FmHA office) and placed in the borrower's case file.

(2) *Problem case report.* If the borrower is unwilling to voluntarily liquidate or fails to carry out a voluntary liquidation within the time set out in paragraph (b)(1) of this section, the County Supervisor will immediately complete Form FmHA 1955–2, "Report on Real Estate Problem Case," and submit it according to § 1955.15 of Subpart A of Part 1955 of this chapter. Additional time will not be allowed for voluntary liquidation before the Form FmHA 1955–2 is completed or before acceleration.

(3) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished immediately according to the applicable paragraphs of § 1955.15 of Subpart A of Part 1955 of this chapter.

(c) *Multiple loans and loans secured by both real estate and chattels.* (1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under Subpart A of Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattel and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1965.27 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the time the borrower is sent Form FmHA 1924–25, except as provided in paragraph (c)(2) of this section.

(2) SFH loans on nonfarm tracts should not be routinely liquidated just because the borrower could not be successful in the farming operation. If the nonfarm property secures only a SFH loan(s), it will not be liquidated unless it is subject to liquidation based on the provisions of § 1965.125 of Subpart C of this part, taking into full consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. When the nonfarm security is also additional security for a farmer program loan(s), consideration will be given to continuing with the SFH loan after the other security for the farmer program loan is liquidated provided:

(i) The borrower has acted in good faith, has satisfactorily accounted for all security, and has met loan obligations to the best of the borrower's ability;

(ii) All security for loans other than the SFH nonfarm security is liquidated either voluntarily or through foreclosure;

(iii) The borrower wishes to retain the dwelling and will likely have repayment ability to continue repaying the housing loan;

(iv) The borrower will further agree to compromise or adjust the farmer program debt as follows:

(A) When the market value of the nonfarm SFH property is greater than the amount of the SFH debt (including total subsidy granted if subject to recapture of subsidy), the borrower will pay an amount equal to his/her equity in the SFH property, and any additional amount he/she is able to pay, on the farmer program debt;

(B) When the market value of the nonfarm SFH property is less than the amount of the SFH total debt, the borrower will pay any amount he/she is able to pay; or

(C) In lieu of a cash payment as outlined in paragraphs (c)(iv) (A) or (B), the borrower will execute a noninterest-bearing note in the amount of his/her equity in the SFH nonfarm tract at the time this transaction is approved, based on a current appraisal, without scheduled installments, which will be due on sale of the housing property or when the borrower ceases to occupy the house as primary residence. A promissory note taken pursuant to this subparagraph will not preclude settlement of the borrower's farmer program debts; and collections made under such a note will be remitted as a "Miscellaneous Collection" for application to the General Fund. The note will be retained in the county office secured file, and a notation of its existence made in the management system and the borrower's case file. The Finance Office will not be involved in the recordkeeping for this type transaction except when a collection is made.

(v) FmHA is prohibited by State law from foreclosing the SFH loan when the nonfarm security is merely additional security for the farmer program loan(s).

(d) *Operation of the security.* A borrower with farmer program loan(s) who without FmHA consent does not operate the farm or recreational facility is violating agreements with FmHA. If the borrower requests consent to cease operating the farm, or the County Supervisor becomes aware of a failure to operate after the fact, the County Supervisor will fully develop the facts, and:

(1) If the borrower is not the farm operator, but is involved in the farm's operation, i.e. management, and will continue to occupy the security, the County Supervisor can give consent with concurrence of the District Director. For inoperative entities, at least one partner of the partnership, one joint operator of the joint operation, one stockholder of the corporation or one member of the cooperative must meet the involvement/occupancy criteria.

(2) If the failure to operate the security is due to old age, poor health, or death in the family and the borrower or the borrower's family will continue to occupy the security, the District Director can give consent. For inoperative entities, at least one partner (or family) of the partnership, one joint operator (or family) of the joint operation, one stockholder (or family) of a corporation or one member (or family) of a cooperative must meet the occupancy criteria.

(3) If the failure to operate the security will be compounded by the borrower or the borrower's family not occupying the security and the failure to occupy is due to conditions beyond the borrower's control, the State Director can give consent if it is determined that the borrower will reoccupy the property within a reasonable period of time, not to exceed five years, and the conditions of paragraph (d)(1) or (d)(2) could then be met.

(4) If consent cannot be given after complying with the requirements of § 1965.26(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated immediately in accordance with § 1955.55(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(5) When liquidation of an account is necessary because of failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement, in accordance with § 1965.26(e) of this subpart.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit or for failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

* * * * *

(f) *Cash sales.* This paragraph applies to a sale of *all* real estate security. Before any cash sale, farmer program borrowers must be sent Form FmHA 1924–14. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale (approval will be documented in the Running Case Record) for an amount not less than the present market value of the property and to release the borrower(s) from liability and release the Government's liens, provided:

* * * * *

119. Section 1965.27 is amended by revising the introductory text of the section and the introductory texts of paragraphs (b), (b)(5) and (b)(5)(iii) and by revising paragraphs (b)(4)(iv), (b)(5)(i)(C), (c)(1)(iii), (g)(8), (g)(9), (h)(1) introductory text, by removing paragraph (b)(4)(v) and redesignating paragraph (b)(4)(vi) as (b)(4)(v) to read as follows:

**§ 1965.27 Transfer of real estate security.**

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Form FmHA 1924–14 within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FmHA accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FmHA loan(s) in full. If an NP loan is involved, § 1965.34 of this subpart also applies. When real estate security, including water, access development or other rights is to be sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart, or will be handled in accordance with § 1965.27(g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for transfer and assumption for this reason is not appealable.

* * * * *

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s). The loan account(s) will be assumed by use of Form FmHA 1965–13, "Assumption Agreement for Farmer Program Loans," Form FmHA 460–9, "Assumption Agreement Same Terms—Eligible Transferee" or Form FmHA 1965–15, "Assumption Agreement Single Family Housing Loans," for SFH loans.

* * * * *

(4) * * *

(iv) The transferee's personal funds equal to the transferee's costs, including the transferor's costs to be paid by the transferee, and transferor's equity (if any) will be held in escrow by an FmHA designated closing agent for disbursal at closing of the transfer.

* * * * *

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA loan servicing regulations. Except as noted below, Forms FmHA 450–10, "Advice of Borrower's Change of Address or Name," FmHA 465–5, and FmHA 460–9 must be prepared and distributed in accordance with the FMI in each of the following situations.

(i) * * *

(C) If a corporation/cooperative received the actual loss loan, the transferee must be either a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made or an entity which is made up of only stockholders/members who were stockholders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss

loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

* * * * *

(iii) When one of the jointly liable individual borrowers withdraws from the operation and conveys his/her interest in the security to the remaining borrower(s), who will repay the total indebtedness, an assumption agreement is not required. This paragraph does not apply to partners in a partnership, joint operators in a joint operation, stockholders in a corporation or members of a cooperative. The previous joint owner will be released from liability for the indebtedness by completing Parts 1 and 3 of Form FmHA 1965–8, "Release from Personal Liability," provided:

* * * * *

(c) * * *

(1) * * *

(iii) *EE, SL, and other type loans no longer being made.* EE, SL, and other type loans no longer being made may be assumed:

(A) On eligible terms by an immediate family member of an individual borrower; an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative; an entity which is made up of only immediate family members of an individual borrower; or an entity which is made up of only immediate family members of any partner(s), joint operator(s), stockholder(s) or member(s).

(B) On eligible terms by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as "FO" or "SFH," as applicable.

(C) On ineligible terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

* * * * *

(g) * * *

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State supplements to provide for new mortgages when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when the interest of anyone liable on the note is conveyed to another liable on the note who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred, Forms FmHA 1965–13; 1965–22; 460–9 (as applicable); 1965–23; 451–1, "Acknowledgment of Cash Payment"; and 1965–8, will be prepared and distributed according to the FMI.

(h) * * *

(1) The County Supervisor will advise the State Director of the transfer or proposed transfer of the security and reasons why FmHA cannot approve the transferee as eligible or ineligible. Complete details of the transfer conditions, terms and consideration will be submitted to the State Director with the borrower (transferor) file. Current information on status of the loan(s) owed FmHA and of any debts owed other lenders on the property will be included with a current appraisal of the FmHA security and security equity position. The appraisal will be completed in accordance with FmHA Instruction 422.1 (available in any FmHA office). Recommendations of the County Committee, County Supervisor, and District Director will be included on the following:

* * * * *

## PART 1980—GENERAL

120. The authority citation for Part 1980 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

### Subpart A—General

121. Section 1980.6 is amended by revising paragraphs (a)(2) and (a)(6) to read as follows:

**§ 1980.6 Definitions and abbreviations.**

(a) * * *

(2) *Borrower.* (B&I and RH loans only). All parties liable for the loan or any part of it. For FP loans, see § 1980.106(b)(4) of Subpart B of this part for the definition of borrower.

* * * * *

(6) *Finance Office.* The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103, (Phone 314–425–4400).

* * * * *

122. Sections 1980.101 through 1980.200 and the table of contents for Subpart B are revised to read as follows:

### Subpart B—Farmer Program Loans

Sec.

1980.101 Introduction.
1980.102–1980.105 [Reserved]
1980.106 Abbreviations and definitions.
1980.107 Full faith and credit.
1980.108 General provisions.
1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.
1980.110 Loan subsidy rates, claims, and payments (for EM actual loss loans only).
1980.111–1980.112 [Reserved]
1980.113 Receiving and processing applications.
1980.114 FmHA evaluation of applications.
1980.115 County Committee review.
1980.116 Review of requirements.
1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.
1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.
1980.119–1980.121 [Reserved]
1980.122 Substitution of lenders.
1980.123 Transfer and assumption of Farmer Program loans.
1980.124 Consolidation, rescheduling, reamortizing, and deferral.
1980.125–1980.128 [Reserved]
1980.129 Planning and performing development.
1980.130 Loan servicing.
1980.131–1980.135 [Reserved]
1980.136 Protective advances.
1980.137–1980.138 [Reserved]
1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.
1980.140–1980.144 [Reserved]
1980.145 Defaults by borrower.
1980.146 Liquidation.
1980.147 Graduation.
1980.148 Appeal procedure.
1980.149 Access to lender's records.
1980.150–1980.152 [Reserved]
1980.153 FmHA forms.
1980.154–1980.174 [Reserved]

Sec.
1980.175 Operating loans.
1980.176–1980.179 [Reserved]
1980.180 Farm Ownership loans.
1980.181–1980.184 [Reserved]
1980.185 Soil and Water loans.
1980.186–1980.199 [Reserved]
1980.200 OMB control number.
Exhibit A—Approved Lender Program—Farm Ownership and Operating Loans
Exhibit B—Guaranteed Debt Adjustment Program
Exhibit C—Application Processing Guide for Guaranteed Farmer Program Loans
Exhibit D—Interest Rate Buydown Program

## Subpart B—Farmer Program Loans

### § 1980.101 Introduction.

(a) *Policy.* This subpart supplemented by Subpart A of this part, contains regulations for making the following Farmer Program loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL) (both loans and lines of credit), Farm Ownership (FO) and Soil and Water (SW) loans. It also contains regulations concerning the servicing of these loans as well as Emergency (EM) and Recreation (RL) loans, which are no longer guaranteed by FmHA. It is the policy of FmHA to guarantee loans made to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap, providing the applicant can execute a legal contract. These regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for Guaranteed Operating (OL) loans, and Guaranteed Farm Ownership (FO) loans. Exhibit B provides policies and procedures for the Guaranteed Debt Adjustment Program (DAP) for Guaranteed Operating (OL) loans (Loan Note Guarantee cases only), and Guaranteed Farm Ownership (FO) loans. Exhibit C (available in any FmHA office) provides an Application Processing guide for lenders packaging applications under this subpart. Exhibit D provides policies and procedures for an Interest Rate Buydown Program for Guaranteed Operating (OL) loans including lines of credit, Guaranteed Farm Ownership (FO) loans and Guaranteed Soil and Water (SW) loans. Appendix A of this subpart (available in any FmHA office) provides information on FmHA-lender interactions during liquidation.

(b) *Program administration.* Farmer Programs are administered by the FmHA Administrator through a State Director, who serves each State through District Directors and County Supervisors. The County Supervisor is the focal point for the program and is the local contact person for processing and servicing activities, even though this subpart refers in various places to the duties and responsibilities of other FmHA employees.

(c) *Administrative provisions.* Within this subpart there are administrative provisions which, for the benefit of the State Directors, District Directors, and County Supervisors, set out the internal duties and responsibilities of FmHA personnel and outline the procedures to be followed in carrying out the requirements of the program. These provisions are identified as "ADMINISTRATIVE" and correspond to the sections of this subpart which they follow.

(d) *References.* §§ 1980.101—1980.174 pertain to the FO, EM, OL, RL, and SW loan programs. The requirements set forth in Subpart A of Part 1980 of this chapter which are not in conflict with the provisions set forth in this subpart must also be met.

(e) *Type of guarantee*—(1) *Loan Note Guarantee.* Lenders desiring to sell the guaranteed portion of fixed amount and term loans will use the method contained in Subpart A of this part. In accordance with that method, loans may be made by a lender and guaranteed by issuance of Form FmHA 449–34, "Loan Note Guarantee?'

(2) *Contract of Guarantee* (Operating Loans—Line of Credit only). Lenders desiring a guarantee on a "line of credit" will use the method contained in Subpart A of this part. Line of credit loans are guaranteed by Form FmHA 1980–27. "Contract of Guarantee (Line of Credit)." The amount of loan may not exceed the line of credit ceiling set forth in the contract. This procedure will be followed for operating purposes—line of credit only. (See § 1980.175(c)(2) of this subpart.)

(f) *Restrictions.* The Administrator will restrict the issuing of OL or FO guarantees if the loans will be used to increase the production of agricultural commodities such as crops, livestock, or livestock products, for such periods as are necessary, when the United States Department of Agriculture is taking action to reduce production and/or has a program for supporting prices and/or has some other subsidy program for the selected agricultural commodity.

(1) In selecting the agricultural commodity, the Administrator will consider such factors as:

(i) The cost of the Government subsidy.

(ii) The amount of surplus of the commodity the Government has in storage or is paying storage on.

(iii) Any indication of restrictions that processors may place upon producers of such commodities.

(iv) The adverse effect of overproduction of the commodity in certain areas and the adverse effect the increased production of the commodity would have on farmers in the area.

(v) Shortages of a commodity in certain areas.

(2) An increase in the production of an agricultural commodity is an increase in the average number of acres, average number of birds, average number of animal units, average number of fish above the established base for the farming operation. The base will be established by calculating the average annual production units of the commodity for the farming operation for the last 5 years and the last 2 years, and using the lower of those two figures. Minor variations that do not exceed a 5 percent increase in production for the year above the base will be considered normal. However, such increases will not be used to increase the base by gradually increasing the numbers year after year.

(3) For crops grown in a farmer's normal crop rotation program, the base will be established by calculating the average production of the commodity for the number of years the crop was grown in the normal rotation cycle or 5 year period, whichever is less.

(4) The County Supervisor will use ASCS records or, if those are not available, the actual farm records for calculating the farming operation's established base. If no production records are available for the commodity, any production will be considered an increase.

(5) Issuing an FO or OL guarantee is prohibited if the loan will be used for financing an increase in production of a selected agricultural commodity. Financing an increase means using loan funds for:

(i) The purchase or renting of additional land and/or buildings for the surplus commodity

(ii) A new facility for expansion or expansion of an existing facility for the surplus commodity

(iii) Items for the direct input for the production of additional acres or units of a surplus commodity such as feed, seed and fertilizer, harvesting costs, etc.

(iv) Starting up or re-establishing a farming operation for the production of a surplus commodity

(v) Converting a farming operation to the production of the surplus commodity.

(6) The provisions of this section are not intended to restrict the use of better

management practices, improved varieties of seed, new technology, etc., or prevent the financing of the sale of an existing farming operation to another operator as long as there is not increase in the average number of acres, birds, animal units or fish above an operation's established base.

(7) A Notice will be published in the **Federal Register** which will state the commodity which is in surplus, the length of the restriction, and the reason for the restriction. A copy of the Notice will be distributed to FmHA offices and will be available to the public at those offices.

(8) If a Loan Note Guarantee or Contract of Guarantee has been issued before the date a restriction is imposed, the restriction *cannot* be used as a reason for failing to issue the guarantee.

**§§ 1980.102—1980.105 [Reserved]**

**§ 1980.106 Abbreviations and definitions.**

(a) *Abbreviations.* See § 1980.6 of Subpart A of this part.

(b) *Definitions.* The following definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of Subpart A of this part.

(1) *Applicant.* The party applying for a guaranteed loan or line of credit.

(2) *Approval official.* An FmHA field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in Tables available in any FmHA office.

(3) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

(4) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

(5) *Corporation.* For the purpose of this subpart, a private domestic corporation recognized as a corporation by the laws of the State(s) in which the entity will operate a farm(s).

(6) *Family farm.* A farm which:

(i) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(ii) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(A) Pay necessary family living and operating expenses.

(B) Maintain essential chattel and real property.

(C) Pay debts.

(iii) Is managed by:

(A) The borrower when a loan is made to an individual.

(B) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan made to a cooperative, corporation, Partnership, or joint operation.

(iv) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(A) The borrower and the borrower's family for a loan made to an individual.

(B) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(v) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

(7) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

(8) *Fish.* Any aquatic, gilled animal commonly known as "fish" as well as mollusks, or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

(9) *Fish farming.* The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

(10) *Fixture.* Generally an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the structure itself.

(11) *Joint operation.* Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

(12) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

(13) *Market value.* The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

(14) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(15) *Nonfarm enterprise.* Any business enterprise, other than farming but including recreation, which provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

(16) *Partnership.* Any entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

(17) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A positive cash flow must show that a borrower will at least be able to:

(i) Pay all operating expenses and taxes and have a reserve for any tax liability.

(ii) Meet scheduled payments on all debts including any required payments on open accounts and on carryover debts.

(iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses, such as providing for expenses for major repairs.

(iv) Have a reasonable standard of living for the individual borrower or the farm operator in the case of a

cooperative, corporation, partnership, or joint operation borrower.

(v) Provide for any essential capital purchases or improvements. Usually it is necessary to plan for a capital expenditures reserve which reflects the depreciating value of the property that will have to be replaced.

(18) *Recreation enterprise.* An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

(19) *Related by blood or marriage.* As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

(20) *Security.* Property of any kind subject to a real or personal property lien. Any reference to "collateral" or "security property" shall be considered a reference to the term "security."

(21) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(22) *Subsequent loans.* Any loans processed by the Finance Office after it processes an initial loan for a borrower.

(23) *Veteran.* One who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps or Coast Guard under conditions other than dishonorable, who served on active duty in such forces: (1) during the period of April 6, 1917, through March 31, 1921; (2) during the period of December 7, 1941, through December 31, 1946; (3) during the period of June 27, 1950, through January 31, 1955; or (4) for a period of not more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

**§ 1980.107 Full faith and credit.**

See § 1980.11 of Subpart A of this part.

**§ 1980.108 General provisions.**

(a) *Security, personal and corporate guarantees, and other requirements.* See §§ 1980.175(h), 1980.180(f) and 1980.185(f) for specific security requirements for the type of loan or line of credit being considered.

(1) *Security.* (i) The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA.

(ii) All security must secure the entire loan/line of credit. The lender may not take separate security to secure only that portion of the loan/line of credit not covered by the guarantee. The lender may not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan/line of credit. However, compensating balances or certificates of deposit as used in the ordinary course of business are not prohibited.

(iii) When FmHA and a guaranteed lender are involved in separate loans to the *same borrower,* separate collateral must be clearly identified for both the FmHA and the lender's loan. Different lien positions on real estate are considered separate collateral. FmHA will not subordinate any interest in property which secures an insured loan, except it may do so when crops are involved to permit a guaranteed lender to advance funds and perfect its security interest in the crop.

(2) *Personal and corporate guarantees.* (i) For FO, SW and OL loans/lines of credit, personal guarantees from all partners of a partnership, and all joint operators of a joint operation will be required. The lender and/or FmHA also may require that such guarantees be secured.

(ii) The lender may ask FmHA to make an exception to the requirement for personal or entity guarantees if the proposed guarantors cannot provide such guarantees due to other existing contractual obligations or legal restrictions. Applicants will give the lender written evidence of any such obligations or restrictions. FmHA's concurrence is required before an exception is made.

(iii) *Guarantors of applicants will:* (A) In the case of Personal guarantees, provide current financial statements (not over 60 days old at time of filing) signed by the guarantors, and disclosing community or homestead property.

(B) In the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing) certified by an officer of the corporation.

(3) *Other requirements.* (i) The lender must ascertain that there are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties against the security of the borrower, and that no suits are pending or threatened that would adversely affect the borrower's interest in the collateral when the security instruments are filed and when final loan disbursement is made.

(ii) Appropriate hazard insurance with a standard mortgage clause naming the lender as beneficiary may be required by the lender when deemed necessary.

(iii) When the lender believes it is necessary, life insurance will be required for the individual borrower or all members of the entity borrower and will be assigned or pledged to the lender. This life insurance may be decreasing term insurance. A schedule of life insurance available will be included as part of the application.

(iv) Workmen's compensation insurance will be obtained as required by State law.

(v) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

(b) *Preference.* In addition to the preferences established in Subpart A of Part 1910 of this chapter, when there is a shortage of funding, an application for a loan for land purchase from an applicant who (1) has a dependent family, or (2) is an owner of livestock and farm implements necessary to successfully carry on farming operation, or (3) is able to make downpayments will be given preference over one from an applicant who does not meet any of these criteria.

(c) *Determining whether credit elsewhere is available.* The lender will certify on the appropriate forms that the applicant is unable to obtain the requested loans/lines of credit without the guarantee from the Government. Property and interests in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, a joint operation and the joint operators as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit without a guarantee.

(d) *Relationship between FmHA loans and guaranteed or insured economic emergency loans.* Borrowers indebted to FmHA and/or an FmHA guaranteed lender for EE loans, may be considered for FO or SW guaranteed loans, or OL guaranteed loans/lines of credit, provided the total outstanding principal indebtedness for EE, FO, RL, SW, or OL guaranteed or insured loans/lines of credit to FmHA and/or an FmHA guaranteed lender would not exceed *$650,000.*

**Administrative**

The County Supervisor will determine whether the lender is requiring the necessary security. If necessary, the assistance of the District Director or Farmer Programs Staff will be obtained.

**§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.**

(a) *Promissory notes, line of credit agreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided such forms do not contain any provisions that are in conflict or are inconsistent with the provisions of this subpart or Subpart A of this part.

(1) Repayment Schedules—In order for notes to be acceptable, the principal and interest repayment schedules will be clearly shown in the note(s). Use of a note with a "payment on demand" feature is not permissible unless it is modified by a supplemental agreement which waives the demand feature and sets forth the repayment schedule.

(2) Signatures—Except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this subpart, the promissory note will be signed as follows:

(i) Individuals. Only one person (the applicant) will sign note as a borrower. If a cosigner is needed, the cosigner will also sign the note.

(ii) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation. The individuals designated by the cooperative or corporation that will operate the farm will sign the note as cosigner(s) and will be personally liable for the debt.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

(b) *Financing statements.* Commercial financing statement forms that comply with State laws and regulations may be used. They must be adapted to meet FmHA requirements by inserting provisions:

(1) Covering the "proceeds and products" of the collateral described, and

(2) Stating that "disposition of the collateral is not authorized hereby."

**§ 1980.110 Loan subsidy rates, claims, and payments (for EM actual loss loans only).**

Loan subsidies are payments made by FmHA to lenders to induce them to service and collect guaranteed EM loans.

(a) *Subsidy rates.* FmHA will establish subsidy rates periodically. Thus, the subsidy rate may vary from time to time. However, the subsidy rate set forth in the Loan Note Guarantee will remain constant during the life of the loan guarantee. The subsidy rate will be a rate equal to the difference, if any, between the interest rate charged to the borrower and any higher annual rate prevailing in the private market for similar loans as determined by the Secretary of Agriculture. The lender may contact the local County Supervisor servicing the area to obtain the current subsidy rate. (See FmHA Instruction 440.1, Exhibit B, a copy of which is available in any FmHA Office.)

(b) *Annual subsidy claims and payments.* The initial subsidy claim will be prepared by the lender using Form FmHA 1980–24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," on or about a date 12 months from the date of the note. The original will be mailed by the lender to the County Supervisor. Subsequent subsidy claims will be filed by the lender on or about a date 12 months thereafter, but no later than the anniversary date of the filing of the initial subsidy claim. Upon full payment of a note the lender will immediately prepare Form FmHA 1980–24 and mail the original to the County Supervisor.

(c) *When subsidy payments cease.* When the FmHA purchases a guaranteed portion of a loan, subsidy payments on that portion will cease. Loan subsidy payments will also cease when the Loan Note Guarantee terminates.

**§§ 1980.111–1980.112 [Reserved]**

**§ 1980.113 Receiving and processing applications.**

An applicant and/or lender may file either a preliminary or complete application. In either case, the requirements of § 1980.46 of Subpart A of this Part must be met. A preliminary application may be used when an applicant or lender wants FmHA to determine eligibility, feasibility, or the availability of guaranteed authority before filing a complete application. Exhibit C (available in any FmHA office) may be used by lenders for submitting applications under this subpart. The requirements of § 1980.46 of Subpart A of this part must be met. The County Supervisor will cooperate with the lender and applicant and will provide appropriate assistance in connection with loan/line of credit application processes. The degree of this assistance will be determined by the lender's experience with FmHA guaranteed loan processing, the lender's farm lending experience, and the complexity of the proposal. The lender and applicant should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the request and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations.

(a) *Preliminary application.* This will consist of:

(1) Form FmHA 449–6, "Application for Guaranteed Loan (Farmer Programs)." For applications to be processed under the Approved Lender feature set out in Exhibit A of this subpart, Form FmHA 449–6 need only reflect the name, address, telephone number, purpose of the loan or line of credit, and date and signature of the applicant, provided the information requested on the form is provided on an attached alternative document such as the lender's application form, the FmHA Request for Loan Note Guarantee/Contract of Guarantee, etc.

(2) Verification of off-farm employment, if any.

(3) Commercial credit report or other information concerning an applicant's credit history.

(4) For a cooperative, corporation, partnership, or joint operation, those additional items listed below in § 1980.113(b) of this subpart.

(5) Any proposed line of credit agreement.

(b) *Cooperative, corporation, partnership, or joint operation applicants.* If the applicant is a cooperative, corporation, partnership, or joint operation the following additional information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, partners, or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(2) A current personal financial statement from all members of a cooperative, joint operators of a joint operation, partners of a partnership, or stockholders of a corporation.

(3) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(4) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of

Directors or members of stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(c) *Preliminary determination by FmHA.* If it appears, after a review of the preliminary application, that the applicant is not eligible, the County Supervisor will notify the loan applicant and the lender in writing within 10 days of FmHA's decision of all the reasons for the decision and advise them of their opportunity for an appeal, as set out in Subpart B of Part 1900 of this chapter, if applicable. If it appears that the applicant is eligible and loan guarantee funding authority is available, the County Supervisor will inform the lender and applicant not later than 20 days after receipt of the preliminary application and request the lender to submit a complete application.

(d) *Complete application.* The complete application will consist of:

(1) Those items listed in paragraphs (a) and (b) of this section.

(2) Applicable items required by §§ 1980.40, 1980.41, 1980.42, 1980.43, 1980.44, and 1980.45 of Subpart A of this part.

(3) Form FmHA 449–12, "Request for Loan Note Guarantee" or Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)."

(4) A copy of any lease, contract or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(5) Form FmHA 440–32, "Request for Statement of Debts and Collateral," or similar documentation provided by Approved Lenders.

(6) Notices of compliance with the Privacy Act of 1974.

(7) Proposed loan agreements or line of credit agreements when a Contract of Guarantee is requested, between the applicant and lender. (See paragraph VII of Form FmHA 449–35, "Lender's Agreement" or paragraph VII of Form FmHA 1980–38, "Lender's Agreement.") Loan Agreements or Line of Credit Agreements will include *at least the following:*

(i) Any improved management practices to be implemented.

(ii) Requirements for accounting and recordkeeping and periodic financial reporting. Line of credit agreements will require the borrower to submit annual financial statements and cash flow projections prepared in accordance with paragraph (d)(8) of this section.

(iii) A list of security for the loan/line of credit and plans for at least an annual accounting for security.

(iv) Prohibitions against assuming liabilities or obligations of others.

(v) Restrictions on patronage refunds, if the applicant is a cooperative; dividend payments, if the applicant is a corporation; or distribution of net income, if the applicant is a partnership or joint operation.

(vi) Limitations on purchase or sale of equipment and/or fixed assets.

(vii) Limits on compensation of officers and/or owners if not a sole proprietorship.

(viii) Minimum working capital requirements.

(ix) Maximum debt to asset ratio.

(x) Restrictions concerning consolidation, mergers or other circumstances if the applicant is a corporate entity.

(xi) Purposes for which loan funds or funds advanced under the line of credit will be used.

(xii) Interest rate.

(xiii) The plan for repayment, reamortization, or rescheduling of the loan or line of credit.

(8) Any readily obtainable financial information for the past 3 years. Production history and operation forecast must also be provided by lender and/or applicant. This will indicate a production history (up to 5 years); current financial condition; projected production; income and expenses; and loan/line of credit repayment plan. Forms ordinarily used by the lender or Form FmHA 431–2 "Farm and Home Plan," Form 431–1, "Long-Time Farm and Home Plan," or Form FmHA 424–1, "Development Plan," may be used, or other similar plans of operation acceptable to FmHA.

(i) Lenders will use the following sources of price information to develop operation forecast projections:

(A) Futures market price less the recognized basis points for the area, documented by date, location, time and degree of use.

(B) Government loan rates, i.e., ASCS target prices.

(C) Published current market prices.

(D) The negotiated price in any forward contract.

(E) Prices developed by the State land grant university for the time of crop sale.

(F) For specialty crops, the average of three previous years' prices, *only* if the above data is not available.

(ii) Crop yields will be estimated in the following priority of information available, or in a combination of information if complete information is not available for each category. Estimated crop yields will be based on the applicant's accurate 5-year average, historical production yields, if available, or ASCS Proven or Established yields. When these sources of information are not available, then yields published by the State land grant university or recognized industry averages for the different soil types may be used.

(9) *Appraisals.*—(i) *Appraisal Report.*

(A) Real estate or chattel property that will serve as collateral for a loan/line of credit will be appraised by a qualified appraiser selected by the lender. The lender is responsible for determining that appraisers have the necessary qualifications and experience to make appraisals. If the lender has any questions in this regard, FmHA should be consulted before an appraisal is made. Appraisal reports may be on forms approved by the lender and/or Form FmHA 422–1, "Appraisal Report Farm Tract," and Form FmHA 440–21, "Appraisal of Chattel Property."

(B) A real estate appraisal report will be based on at least two comparable sales made within 2 years. If the real estate has been appraised by FmHA or by a qualified appraiser within the last 12 months and if no significant changes in the market value of real estate have occurred in the area within the past 12-month period, a new appraisal does not have to be made.

(C) A *current* chattel appraisal is required when chattels are taken as security.

(ii) *Appraiser Qualifications.* The lender is responsible for substantiating the appraiser's qualifications. At FmHA's request the lender will provide documentation of the appraiser's qualifications. The appraiser completing the report must meet at least *one* of the following qualifications:

(A) Certification by a National or State appraisal society.

(B) If a certified appraiser is not available the lender may use other qualified appraisers, if the lender can establish that the appraiser meets the criteria for certification in a National or State appraisal society.

(C) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

(10) The lender's plan for servicing the loan/line of credit and providing management assistance to the borrower, including the steps necessary to see that the requirements of the loan agreement are met.

**Administrative:**

A. Regardless of whether the applicant is acting as an individual or as a representative of a cooperative, corporation, partnership, or joint operation, when FmHA solicits personal information, the individual will be given FmHA 410–9, "Statement Required by the Privacy Act."

B. If FmHA desires to obtain information concerning an individual from any source, FmHA will provide such source with Form FmHA 410–10, "Privacy Act Statement to References."

C. Immediately after a preliminary or complete application is received, and prior to County Committee action, the County Supervisor will send Attachment 1 to Exhibit D of this subpart to the lender describing the Interest Rate Buydown Program if not previously sent to the lender.

**§ 1980.114 FmHA evaluation of applications.**

When the County Supervisor receives a complete application, the proper independent investigations, inspections, and appraisal reviews will be made to determine whether the applicant is eligible, whether the proposed loan/line of credit is for authorized purposes, whether there is a reasonable assurance of a positive cash flow projection, and whether there is sufficient collateral and equity. The determinations will be recorded on Form FmHA 449–23, "Guaranteed Loan Evaluation." This evaluation is for the benefit of FmHA and not the lender. The County Supervisor will notify participants in the Approved Lender Program within 3 working days whether an application submitted is complete and acceptable. Nonapproved lenders will be advised on the completeness of applications within 14 working days. This requirement is contingent upon the availability of a County Supervisor during the prescribed time frame, and employment ceilings affecting FmHA.

(a) *Indication of unacceptability.* If the evaluation indicates that the guarantee cannot be approved for reasons that would not be affected by the County Committee certification, the County Supervisor will inform the lender and the loan applicant in writing within 10 days of the decision of these reasons, discuss with them ways to overcome the denial of the guarantee, and inform them of their opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

(b) *Indication of acceptability.* If the evaluation indicates that the guarantee may be approved, the County Supervisor will present the application to the County Committee for certification or rejection.

**Administrative:**

The County Supervisor will:

A. Determine if the material and information submitted is complete.

B. Determine that a positive cash flow projection as defined in § 1980.106(b)(19) can be reasonably achieved.

C. Determine if the proposed collateral is adequate, repayment plan realistic, and loan agreement is satisfactory.

D. Determine that the requirements of § § 1980.40 through 1980.45 of Subpart A of this part and those found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

E. When Form FmHA 1940–20, "Request for Environmental Information," is required, follow the requirements of Subpart G of Part 1940 of this chapter.

**§ 1980.115 County Committee review.**

The County Supervisor will have the County Committee review acceptable loan applications within 30 days (or 14 days, if a participant in the Approved Lender Program is involved) after receipt of completed applications to determine whether the applicants meet FmHA eligibility requirements. The County Supervisor will promptly notify the lender and applicant in writing of the County Committee's determination. (See § 1980.115 Administrative paragraph B.)

(a) *Favorable action.* If the County Committee finds the applicant eligible, the members will sign Form FmHA 440–2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. If the County Supervisor or the loan approval official disagrees with the County Committee's decision, the County Supervisor or loan approval official will send the case to the State Director for review. The County Supervisor or loan approval official will include in the file the reasons for the disagreement with the decision. If after a review of the case the State Director overturns the County Committee's decision the applicant will be notified of the unfavorable decision, along with the ECOA Notice and given the opportunity to appeal; the State Director will be considered the decision maker. The County Committee will be informed of the action and the reasons for overturning their decision. When the applicant has been determined eligible for assistance and additional information becomes available that indicates the original determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. If, after reconsideration, the applicant is rejected, adverse action has occurred, and proper notification will be sent.

(b) *Unfavorable action.* If the County Committee finds the applicant ineligible, the members will complete Form FmHA 440–2 and the County Supervisor will inform the lender and the loan applicant in writing within 10 days of FmHA's decision of the reasons for disapproval and of their opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

**Administrative:**

A. After County Committee certification is obtained, the County Supervisor will:

1. Prepare Form FmHA 1940–1, "Request for Obligation of Funds" and, for initial loans/lines of credit only, Form 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," in accordance with the FMI.

2. Prepare Form FmHA 449–14, "Conditional Commitment for Guarantee," or Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." In no case will Form FmHA 449–14 or 1980–15 be executed prior to the determination of availability of funds for the loan/line of credit. Any special conditions of approval will be listed in the space provided on the form, including requirements for security, improved management practices, and the type and frequency of financial reports required by FmHA but not required by the lender. An attachment to the form may be used if necessary. When form FmHA 1980–15 is executed, the approval official will add the requirement that the lender will submit to FmHA a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) for prior approval of advances to be made for the second and third years of a line of credit.

3. Forward the loan docket to the appropriate approval official if the loan/line of credit is not within the County Supervisor's approval authority.

B. The approval official will:

1. Approve or disapprove all guaranteed applications not later than 60 days after receipt of completed applications, and execute Forms FmHA 1940–1, 449–14 and/or 1980–15 and distribute the copies in accordance with FMI. In order to meet the prompt approval requirement when funds are temporarily exhausted and the loan to be approved, Form FmHA 1940–1 must be signed. The following approval condition will be included, under Section 41, "Comments and Requirements of Certifying Official," for guaranteed Farmer Program loans.

"This guarantee is approved subject to the availability of funds. If this guarantee is not issued for any reason within 90 days from the date of approval on this document, the approval official may request updated information concerning the lender and the loan applicant. The undersigned lender agrees that the approval official will have 14 working days to review any updated information and decide whether to submit this document for obligation of funds." When funds are exhausted, a Conditional Commitment for Guarantee *will not* be executed until such time as funds have been obligated in connection with the guarantee request.

2. Upon receipt of notification of obligation of funds, set forth in the space provided on Form FmHA 449–14 (A.1., above) or Form FmHA 1980–15 (A.1., above) any special

conditions of approval, including requirements for security, improved management practices, relating to highly erodible land and conversion of wetland found in Exhibit M of Subpart G of Part 1940 of this chapter, and type and frequency of financial reports required by FmHA but not required by the lender.

An attachment to the form may be used, if necessary. Return Forms FmHA 449–14 or FmHA 1980–15 to the County Supervisor for execution and proper distribution. When Form FmHA 1980–15 is executed the approval official will add the requirement that the lender will submit to FmHA a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) for prior approval of advances made for the second and third years of a line of credit.

3. Forward the loan docket to the appropriate approval official if loan/line of credit exceeds the State Director's approval authority or when the State Director needs assistance in handling any complaints of noncompliance.

4. In addition to the requirements in paragraph B.1., above, approval determinations will be made within 14 working days of County Committee Certification for Approved Lenders, and within 30 days of County Committee Certification for nonapproved lenders.

**§ 1980.116 Review of requirements.**

The lender and applicant, after reviewing approval conditions and security requirements as set forth in Form FmHA 449–14 or Form FmHA 1980–15, will complete and execute the "Acceptance or Rejection of Conditions" and return a copy to the County Supervisor. If the conditions cannot be met, the lender and applicant may propose alternatives to the County Supervisor. These alternatives will be considered and the lender will be advised of FmHA's decision to accept or reject the alternatives. If accepted, Form FmHA 449–14 or FmHA 1980–15 will be so revised. If rejected, the County Supervisor will notify the loan applicant and the lender in writing within 10 days of FmHA's decision, of all the reasons for the decision, and advise them of their opportunity for appeal as set out in Subpart B of Part 1900 of this chapter.

**§ 1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.**

See § 1980.60 of Subpart A of this part. The provisions of § 1980.60(a)(2) and (8) are *not* applicable to Farmer Program loans.

**Administrative:**

The County Supervisor will:

A. Consult with the lender and applicant concerning any changes made to the initially issued or revised Form FmHA 449–14 or FmHA 1980–15. A copy of Form FmHA 449–14 or FmHA 1980–15 and any amendments will be included in the file.

B. Review the loan agreement between the borrower and lender which provides for the periodic submission of financial statements to the County Supervisor. *An annual analysis report will be required.* In line of credit cases the County Supervisor will review with the lender the requirement that the lender is to submit a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) for prior approval of advances made in the second and third years of a line of credit.

C. Review plans for inspection on construction projects.

D. Review basic credit requirements of all loans/lines of credit.

E. Review cost overruns, if any, and how they will be met.

**§ 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.**

(a) See § 1980.61 of Subpart A of this part.

(b) A guaranteed portion of the loan may not be sold by the lender until at least an equal amount of guaranteed loan funds have been disbursed to the borrower. The guaranteed portion of a line of credit will never be sold or assigned by the lender except as provided in paragraph III of Form FmHA 1980–38.

(c) The amount to be entered in the blank in paragraph IX (C)(5) of Form FmHA 449–35, or paragraph IX (C)(5) of Form FmHA 1980–38 for a loan secured by chattels, will be the lesser of $10,000 or 20 percent of the loan/line of credit for OL loan/line of credit purposes and the lessor of $25,000 or 20 percent of the loan for EM loan purposes.

(d) Paragraph IX (C)(10) of Form FmHA 449–35 will be changed by striking the word "semiannually," inserting the word "annually" in its place, and eliminating the words "and June 30."

**Administrative:**

A. *Section 1980.61(a).* The original Form FmHA 449–35 or Form FmHA 1980–38 will be kept in the County Office.

B. *Section 1980.61(b)(1).* Copy(ies) of the Loan Note Guarantee(s) or Contract of Guarantee(s) will be kept in the County Office. Additional copy(ies) may be retained by the State Office. Copies of all issued Loan Note Guarantees or Contract of Guarantee(s) will be kept in the file.

C. *Section 1980.61(b)(3).* For reporting purposes where multinotes are issued, the loan will be counted as one loan regardless of the number of notes issued.

**§§ 1980.119–1980.121 [Reserved]**

**§ 1980.122 Substitution of lenders.**

With prior written approval of the FmHA State Director, a new eligible lender may be substituted for the original lender provided the new lender agrees in writing to assume all servicing and other responsibilities *of the original lender* and acquires the unguaranteed portion of the loan. Such substitution may be made without the holder's consent but not without notice to holder(s) by the substituted lender. The new lender will execute Form FmHA 449–35 or Form FmHA 1980–38 at the same time of the substitution. After approval of the lender, Form FmHA 1980–42, "Notice of Substitution of Lender," will be completed by the FmHA servicing representative and mailed to the Finance Office.

**§ 1980.123 Transfer and assumption of Farmer Program loans.**

(a) All transfers and assumptions must be approved in writing by FmHA. Such transfers and assumptions must be to an eligible applicant. EM actual loss loans may only be transferred to a co-obligor.

(b) The transferee will submit Form FmHA 449–6, and other needed information to the lender for evaluation.

(c) In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual transferee or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding years. Applicants will attest on Form FmHA 449–6, "Application for Guaranteed Loan," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for transfer and assumption for this reason is not appealable.

(d) When a transfer and assumption occurs and the transferee has an outstanding insured or guaranteed FO, SW or RL loan, the borrower's total unpaid principal insured and guaranteed indebtedness for these loans may not exceed the lesser of $300,000 or the market value of the farm or other security. When the transferee is indebted for an OL loan/line of credit, the transferee's total insured and guaranteed OL principal balance may

not exceed $400,000 at the time of the transfer and assumption.

(e) Available transfer and assumption options to eligible applicants include transferring the *total* indebtedness to another borrower on the same terms, or on different terms not to exceed those terms for which an initial loan/line of credit can be made.

(f) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or the line of credit ceiling for Contracts of Guarantee. If the transfer is for less than this:

(1) FmHA must determine that the transferor has no reasonable debt-paying ability considering assets and income at the time of the transfer.

(2) The FmHA County Committee must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the transferor's ability.

(f) Any proceeds received from the sale of security before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption transaction is closed.

(g) The lender is responsible for getting an appraisal of the fair market value of all the collateral securing the loan/line of credit. Subject to the approval of the transferor and transferee, an appraisal can be made by either independent fee appraisers or qualified appraisers on the lender's staff. Appraisers must meet the qualifications outlined in § 1980.113(d)(9)(ii) of this subpart. The appraisal report fee and other related costs will be paid by the transferor and the transferee, as they agree.

(h) The market value of the security being acquired by the transferee, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the total guaranteed loan/line of credit ceiling for Contracts of Guarantee, plus any prior liens.

(i) If any cash downpayment is made, it may be paid directly to the transferor as payment for the transferor's equity in the project provided:

(1) The lender recommends and FmHA approves the cash downpayment be released to the transferor.

(2) Any downpayment that is made by the transferee to the transferor does not suspend the transferee's obligation to continue to make the guaranteed loan/line of credit payments as they come due under the terms of the assumption.

(3) The transferor agrees not to take any actions against the transferee in connection with such transfer in the future without first obtaining the approval of FmHA and the lender.

(4) The lender determines that the transferee has the ability to repay the guaranteed debt assumed and any other indebtedness.

(j) The lender will issue a statement to FmHA that the debt can be properly transferred and the conveyance instruments must be filed, registered, or recorded, as appropriate, and must be legally sufficient.

(k) FmHA will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(l) The assumption will be made on the lender's form of assumption agreement.

(m) The assumption agreement must contain the FmHA case number of the transferor and transferee.

(n) The assumption agreement may change loan terms and/or interest rates only if a new loan note guarantee or Contract of Guarantee will be executed.

(o) In the case of a transfer and assumption at the same rates and terms the lender must give any holder(s) notice of the transfer and notice that future payments will be made under a different name and case number. It is the lender's responsibility to see that the transfer and assumption is noted on all originals of the Loan Note Guarantee or Contract of Guarantee. The lender must provide FmHA with a copy of the transfer and assumption agreement.

(p) Before allowing a transfer and assumption at *different* rates and terms, the lender must consult with any holder(s). If the holder(s) consents in writing to the transfer, the lender must provide FmHA with a copy of the transfer and assumption agreement and must note the transfer and assumption on all originals of the Loan Note Guarantee or Contract of Guarantee.

**Administrative:**

A. Loan approval officials may consent:

1. To all transfer and assumption cases.

2. To the release of the transferor and guarantor(s) from liability on the loan or line of credit agreement. The approval official will notify the lender and the appropriate parties of the decision in writing.

3. To any changes in the loan or line of credit terms and/or interest rates provided the holder(s), if any, and lender agree.

B. The Loan Note Guarantee or Contract of Guarantee will be endorsed in the space provided on the form.

C. A copy of the Assumption Agreement will be retained in the County Office file. The County Supervisor will notify the Finance Office of all approved transfer and assumption cases so that Finance Office records may be adjusted accordingly. This will be accomplished by sending completed Forms FmHA 1980–7, "Notice of Transfer and Assumption of a Guaranteed Loan," FmHA 1980–51, "Add, Change, or Delete Guaranteed Loan Record," and, for new borrowers, FmHA 1980–50 to the Finance Office.

**§ 1980.124 Consolidation, rescheduling, reamortizing, and deferral.**

(a) *General requirements.* All borrowers are expected to repay their loans according to the planned repayment schedule. However, circumstances may arise which will not permit borrowers to pay as scheduled. When rescheduling, reamortization, or deferral will assist in the orderly collection of a loan, such action *may* be taken provided:

(1) The borrower meets the eligibility requirements for an initial loan guarantee and the lender's security position would not be adversely affected. For FO, SW loans and OL loans/lines of credit refer to this subpart for these requirements. For EM loans refer to Subpart D of Part 1945 of this chapter for eligibility and security requirements. For RL loans refer to SW eligibility and security requirements as set out in this subpart.

(2) Such action is not used in lieu of or to delay liquidation;

(3) Such action is not taken to remove a delinquency;

(4) The lender determines that a feasible plan of operation cannot be developed with the existing repayment schedule, but can be developed with revised repayment terms;

(5) The borrower is cooperating in servicing the account and is maintaining the security;

(6) Such action will enable the borrower to continue farming; and

(7) Any holder(s) agrees in writing to the rescheduling, reamortization, and deferral. The holder(s) must understand that they will not receive any payments from the lender or from FmHA during any deferral period.

(8) No interest is ever charged on interest.

(b) *Consolidation and rescheduling.*

(1) The term "consolidate" means to combine the outstanding principal and interest balances of two or more EM loans *made for operating loan (Subtitle B) purposes* or two or more OL loans.

(2) The term "rescheduling" means to rewrite the rates and/or terms of a single Promissory Note or Line of Credit Agreement which acknowledges indebtedness for a loan made for

operating purposes (EM loan or OL loan/line credit).

(3) EM loans made for operating loan purposes may be consolidated only with other EM loans made for operating loan purposes, including EM loans for annual operating purposes and EM major adjustment loans for operating (Subtitle B) purposes. OL Loan Note Guarantee loans may be consolidated only with other OL Loan Note Guarantee loans.

(4) An EM loan made for operating loan purposes or an OL loan/line of credit may be rescheduled when it is in the best interest of the borrower and the lender to do so.

(5) EM loans for actual losses, EM major adjustment loans for real estate purposes and OL loans secured by real estate and OL Contract of Guarantee Lines of Credit will *not* be consolidated.

(6) There is no limit on the number of times a consolidation or rescheduling action may take place.

(7) The interest rate for a consolidated or rescheduled EM loan for operating purposes will be the current rate established by the Secretary of Agriculture for similar type loans in effect at the time of action. This information is available from any FmHA office (See FmHA Instruction 440.1, Exhibit B).

(8) The interest rate for a consolidated OL loan or rescheduled OL loan/line of credit will be the negotiated rate agreed upon by the lender and the borrower subject to the limitations set out in § 1980.175(e) of this subpart.

(9) The new note or line of credit agreement which exists after a consolidation or rescheduling occurs must be repaid over a period *not to exceed fifteen years* for Loan Note Guarantee, *or seven years for Contracts of Guarantees* from the date of the action, unless the new note evidences a loan made solely for recreation and/or nonfarm enterprise purposes, in which case it must be repaid over a period not to exceed seven years from the date of the action. Balloon payments are prohibited, however, the loan can be rescheduled in unequal amortized installments, provided the current year and any typical year plan(s) demonstrate that these installments can be repaid without further rescheduling. Unequal amortized installments will be used only in those cases where a new enterprise is being established, developing a farm, purchasing feed while feed crops are being established or during recovery from economic reverses.

(10) When a consolidation occurs, a new Form FmHA 449–34 will be executed.

(c) *Reamortization.* The term "reamortize" means to rearrange the rates and/or terms of a loan(s) made for real estate purposes, i.e., FO, SW, RL, EM actual loss loans having basic security consisting of real estate, and EM major adjustment loans *made for real estate (Subtitle A) purposes.* Scheduled payments may be rearranged over the remaining term of the original repayment period established for the loan or assumption agreement (new terms), or be rearranged over a period not to exceed the maximum statutory period which is set at 40 years from the date of the original note.

(1) The interest rate for a reamortized EM actual loss loan will be at the same rate as the original loan.

(2) The interest rate for a reamortized EM major adjustment loan for real estate purposes will be the current market rate in effect for similar type loans at the time of reamortization as established by the Secretary of Agriculture. This information is available from any FmHA office. (See FmHA Instruction 440.1, Exhibit B).

(3) The interest rate for a reamortized loan will be the negotiated rate agreed upon by the lender and the borrower at the time of the action subject to the limitations set out in §§ 1980.180 and 1980.185 of this subpart, as applicable. The interest rate limitation set out in these sections will also apply when RL loans are reamortized.

(d) *Deferral.* The term "defer" means to postpone the payment of interest and/or principal on an FO, SW, RL, OL or EM loan or OL line of credit. Principal may be deferred in whole or in part. Interest may be deferred only in part. A partial payment of interest will be required during the deferment period.

(1) Deferred interest will not be capitalized.

(2) Payments may be deferred for no more than three years, but in no case will the deferral period extend beyond the final due date of the note.

(3) The lender must determine that scheduled payments cannot be made for reasons beyond the borrower's control and must also determine that there are reasonable prospects that the borrower will be able to resume full payments at the end of the deferral period.

(e) The new note or line of credit agreement will not increase the amount of principal which the borrower would have been required to pay if the consolidation, rescheduling or reamortization had not been made.

(f) The new note or line of credit agreement will describe the note(s) or line of credit agreement(s) being consolidated, deferred, reamortized or rescheduled and will state that the indebtedness evidenced by such note(s) or line of credit agreement(s) is *not* satisfied. The original note(s) or line of credit agreement(s) will be retained for identification purposes.

(g) Additional security instruments will be required if needed to maintain lien priority or to protect the interests of the lender and FmHA.

**§§ 1980.125–1980.128 [Reserved]**

**§ 1980.129 Planning and performing development.**

The lender is responsible for seeing that any buildings or other improvements or major land development to be paid for with loan funds are properly completed within a reasonable period of time. The security must be free of any mechanic's, materialmen's or other liens which would affect the priority of the lien which the lender told FmHA be taken on the security. All major construction, major repairs, and major land development must be performed under contract. As soon as such construction, repair, or land development involving the use of loan funds has been completed in accordance with the plans and specifications, Form FmHA 449–11, "Certificate of Acquisition or Construction," will be completed and given to the County Supervisor. This form will be used by a lender, borrower, and/or contractor to certify that the security has been acquired or the construction completed. In connection with construction the lender is responsible for:

(a) Making sure there is compliance with applicable laws, ordinances, codes and regulations, including FmHA regulations, which affect all phases of construction. The lender may inspect the site and any construction or development work at any stage whenever the lender considers it necessary.

(b) Seeing that the plans, specifications, and estimates are adequate.

(c) Making sure of the rights to an adequate water supply of sufficient quantity and quality.

(d) Identifying whether the construction or development will be performed by contract or other method.

(e) Checking to see that any necessary bonds covering contractors are in proper form.

(f) Seeing that all equal opportunity and nondiscrimination requirements are met. (See § 1980.41 of Subpart A of this part.)

(g) Limiting periodic or partial payments for construction or

development to a reasonable percentage of the actual value of work and material in place. The lender will make final payment only after seeing that the final inspection has been made.

(h) Ascertaining that after planned development is completed, the requirements of § 1980.108(a)(3)(i) of this subpart are met.

**Administrative:**

A. The County Supervisor will:

1. Check to see that the construction, repair or land development has been completed.

2. Forward Form FmHA 449–11 to the lender for completion and execution by the lender, borrower and contractor.

**§ 1980.130 Loan servicing.**

The lender is responsible for loan servicing as required by paragraph IX of Form FmHA 449–35, or paragraph IX of Form FmHA 1980–38.

**Administrative:**

A. The lender has the responsibility for loan servicing and protecting the collateral. The County Supervisor is responsible for monitoring the loan to see that the required servicing is properly accomplished. Prompt followup on delinquent payments and early recognition of problems are keys to resolving many delinquent loans.

B. The County Supervisor will:

1. Make timely investigations during acquisition and development and at least annually thereafter to determine whether any security that was to be acquired or constructed after issuance of the Loan Note Guarantee or Contract of Guarantee has been acquired or constructed, *and* whether the guaranteed loan/line of credit is being properly serviced. A complete review of the lender's file should be made using Attachment 1 (available in any FmHA office) to this subpart. In addition, the supervisor may accompany the lender on a visit to selected guaranteed loan borrowers. If a problem develops the County Supervisor will promptly contact the lender to resolve it.

2. Review all the borrower's financial statements furnished by the lender and remind the lender of its servicing responsibilities required in paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38 when deficiencies are noted.

3. Contact the State Office when information indicates the lender or the borrower has failed to fulfill any of the loan approval conditions and the resulting problem cannot be resolved by the County Supervisor and the lender.

4. Take the action required in paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

5. Use an office management system for guaranteed loans to assure timely followup on all required financial statements, and to make sure any special requirements for loan servicing conditions are met.

C. The District Director will:

1. Provide guidance and assistance to the County Supervisor in monitoring guaranteed loans/lines of credit.

2. Review all field visit reports and make recommendations or comments and transmit them to the State Director, if necessary.

D. County Supervisors are authorized to approve or concur in:

1. Alterations in the approval conditions which will not prejudice the Government's interest.

2. Any replacement of collateral for the loan/line of credit.

3. All lien coverage and lien priorities on the collateral established by the lender before issuance of the Loan Note Guarantee or Contract of Guarantee.

4. Any deferral, rescheduling, or reamortization of the loan.

5. The use of proceeds from the disposition of collateral complying with the provisions of paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

**§§ 1980.131–1980.135 [Reserved]**

**§ 1980.136 Protective advances.**

It is not intended that protective advances be made in lieu of additional loans. See paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38.

**Administrative:**

The County Supervisor is authorized, under paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38, to approve protective advances in excess of $500 and will consult with the lender on future servicing of the account. To determine if the loan/line of credit is to be continued with the borrower, the borrower's ability to pay the remaining loan/line of credit balance and any future advances in accordance with the existing repayment schedule will be considered.

**§§ 1980.137–1980.138 [Reserved]**

**§ 1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.**

See paragraph 12 of Form FmHA 449–34, or paragraph 5 of Form FmHA 1980–27.

**Administrative:**

The County Supervisor will advise the Finance Office by memorandum when a Loan Note Guarantee or Contract of Guarantee is terminated.

**§§ 1980.140–1980.144 [Reserved]**

**§ 1980.145 Defaults by borrower.**

(a) See paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

(b) The lender will arrange with the County Supervisor to meet with the borrower to resolve the problems. At least 3 working days prior to the meeting the County Supervisor will mail Attachment 1 to Exhibit D of this subpart to the lender and the borrower.

(c) A record of the meeting will be prepared, which will at least include a list of the individuals who attend, and a summary of the problem and proposed solutions. The original will be retained in the lender's loan file and a copy will be submitted to the County Supervisor.

**Administrative:**

A. The County Supervisor will review and distribute Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph X A of Form FmHA 449–35 or paragraph X A of Form FmHA 1980–38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in paragraph X D of Form FmHA 449–35) when the holder(s) is located in close proximity to the local lender. If any holder is located outside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Supervisor, the County Supervisor will be notified of the transaction.

B. The County Supervisor will verify the amounts due the holder(s), and transmit the holder's demand for payment by memorandum to the State Director. Copies of evidence of the holder's ownership will be included. Any original evidence of ownership will be retained in the County Office. A proposed payment date will be established in order to calculate the interest due the holder(s).

C. In the event of default or servicing problems, the County Supervisor will use Form FmHA 1980–37, "FmHA Purchase of Guaranteed Loan Portion," to request a check to pay the guaranteed portion of a loan(s) to the holder(s) when necessary. The Finance Office will forward the check within 10 days after receipt of the request.

D. Any evidence of ownership retained in the County Office will be considered in any future report of loss calculations. A record of any purchase will be maintained in the loan file.

**§ 1980.146 Liquidation.**

(a) *General.* The general requirements for liquidating a guaranteed Farmer Program loan/line of credit are set out in § 1980.64 of Subpart A of this part and in paragraph XI of Form FmHA 449–35 or paragraph XI of Form FmHA 1980–38. The lender may use any method of liquidation customary to the farm lending industry so long as the method will result in the maximum collection possible on the debt. All liquidations must receive prior concurrence by the appropriate FmHA official. Estimated or Final loss claims will be submitted using Form FmHA 449–30, "Loan Note Guarantee Report of Loss," along with the required supporting documentation set out in the instructions for preparing the form.

(b) *Estimated loss payments.* (1) Estimated loss payments will be made after the lender has submitted a liquidation plan that has been approved by the County Supervisor for loss

payments up to $55,000, or the State Director for loss payments in excess of $55,000. Estimated loss payments will be inserted under "Amount Due Lender" on Form FmHA 449–30. The Director, Finance Office, will forward loss payment checks within 30 days of receipt of request.

(2) If the actual loss is less than the estimated loss payment, the lender will reimburse FmHA for the overpayment, plus interest at the note or line of credit agreement rate from the point of initial check issuance. Variable interest notes or line of credit agreements will bear interest at the average note or line of credit agreement rate paid during the loan/line of credit term.

(c) *Allowable liquidation costs.* In the preparation of a liquidation plan, reasonable liquidation costs will be allowed. Reasonable is defined as the prevailing rate charged in the area for like services. Liquidation costs are paid from the sale of collateral when the lender has conducted the liquidation. Therefore, if liquidation never occurs or if liquidation is conducted by someone other than the lender (a bankruptcy trustee, for example), there can be no allowable liquidation costs.

(1) *In-house expenses.* In-house expenses of the lender *are not allowable* costs under a liquidation plan. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel and overhead.

(2) *Appraisals.* If an appraisal is made and the fee is shared by FmHA and the lender in accordance with paragraph XI A 4 of Form FmHA 449–35 or paragraph XI A 4 of Form FmHA 1980–38.

**Administrative:**

A. Refer to Appendix A of this subpart (available in any FmHA office) for advice on how to interact with the lender on liquidations and property management.

1. *Meetings.* The County Supervisor will meet with the lender when the lender or FmHA determines that liquidation is necessary and will inform the District Director and the State Director of the results. If FmHA liquidates, all of the requirements for liquidating an FmHA insured loan will be followed (see Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter).

2. *Form FmHA 449–35, paragraph XI B or pararaph XI B of Form FmHA 1980–38.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to provide a reasonably adequate recovery. If FmHA liquidates, all of the requirements for liquidating an FmHA insured loan will be followed (see Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter). The County Supervisor will approve lender liquidation plans or exercise the FmHA option to liquidate. The District Director or State Office may be consulted on complex cases for advice if necessary. When such a decision is made, submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

3. *Form FmHA 449–35, paragraph XI D or paragraph XI D of Form FmHA 1980–38.* County Supervisors are responsible for seeing that the lender complies with the requirements of paragraph XI D. The County Supervisor will accept or reject the accounting reports as submitted by the lender and will obtain the advice of the District Director or State Office, when necessary. When FmHA liquidates the security, the County Supervisor will submit these reports to the lender and will send copies to the District Director and the State Office.

4. *Form FmHA 449–35, paragraph XI E 2 or paragraph XI E 2 of Form FmHA 1980–38.* County Supervisors are authorized to accept Report of Estimated Loss or Final Loss Payment determinations on Form FmHA 449–30 in those cases where the loss payment will not exceed $55,000. The State Director is authorized to accept the determinations in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449–30 to the Finance Office for payment of any losses. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to lender.

5. *Form FmHA 449–35, paragraph XI E 3 or paragraph XI E 3 of Form FmHA 1980–38.* Final loss payments will be made within 60 days after the review of the accounting of the collateral. These payments will be reduced, if necessary, after considering the Conditions of Guarantee in Form FmHA 449–34 or Form FmHA 1980–27. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60–day period. The County Supervisor may conduct such reviews when the loss payment does not exceed $55,000. The State Director will conduct all other reviews. The State Director may request National Office assistance in conducting any review. If a lender's final loss claim is either denied or reduced, the County Supervisor will notify the lender in writing within 10 days of FmHA's decision, of all the reasons for the decision, and advise the lender of its opportunity for appeal as set out in Subpart B of Part 1900 of this chapter.

**§ 1980.147 Graduation.**

There is no graduation requirement for guaranteed loans/lines of credit.

**§ 1980.148 Appeal procedure.**

Refer to Subpart B of Part 1900 of this chapter for the method of appealing adverse decisions of County Committees, County Supervisors, District Directors and State Director.

**§ 1980.149 Access to lender's records.**

See § 1980.81 of Subpart A of this part for this requirement.

**§§ 1980.150–1980.152 [Reserved]**

**§ 1980.153 FmHA forms.**

See § 1980.83 of Subpart A of this part and Exhibit C (available in any FmHA office) of this subpart.

**Administrative:**

A. *Office of the General Counsel (OGC):* In performing administrative functions with respect to Farmer Program loans, FmHA may ask for the advice and assistance of OGC on any legal matter. However, in loan making, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are met. If FmHA has any questions concerning the lender's resolution of these matters, it should consult with OGC.

B. *Delegation of Authority:* State Directors should delegate to their staff members those administrative duties and responsibilities stipulated in the Administrative sections of this subpart.

**§§ 1980.154–1980.174 [Reserved]**

**§ 1980.175 Operating loans.**

(a) *Objectives.* The basic objective of the guaranteed OL loan program is to provide the credit necessary for family farmers and ranchers to conduct successful operations. This assistance enables family farm operators to make efficient use of their land, labor and other resources, to improve their living conditions and to improve their overall economic situation.

(b) *Loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee or the Contract of Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 449–6, "Application for Guaranteed Loan," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not

appealable. In addition, the following requirements must be met:

(1) An individual must:

(i) Be a citizen of the United States (See § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) Possess the legal capacity to incur the obligations of the loan.

(iii) Have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iv) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(v) Honestly try to carry out the conditions and terms of the loan.

(vi) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(vii) Be an owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(2) A cooperative, corporation, partnership or joint operation must:

(i) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its members, stockholders, partners, or joint operators, as individuals.

(ii) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made.

(iii) Consist of members, stockholders, partners or joint operators who are individuals and not a cooperative(s), corporation(s), partnership(s), or joint operation(s).

(iv) If the members, stockholders, partners, or joint operators holding a majority interest are related by marriage or blood:

(A) They must be citizens of the United States (see § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(B) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(C) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry —out the proposed operation.

(D) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(E) At least one member, stockholder, partner or joint operator must operate the family farm.

(F) The entity must operate the farm and be authorized to own or operate a farm in the State(s) in which the farm is located.

(v) If the members, stockholders, partners or joint operators holding a majority interest are *not* related by marriage or blood:

(A) The requirement of paragraphs (b)(2)(iv) (A) through (D) must be met.

(B) They and the entity itself must operate the family farm.

(C) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(vi) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (1) all of the members of the entity are related by blood or marriage, (2) all of the members are or will be operators of the entity, and (3) the majority interest holders of the entity meet the requirements of paragraphs (b)(2)(iv) (A) through (D) and (F) of this section.

(c) *Loan purposes*—(1) *Loan Note Guarantee.* Loans may be made for farm, forestry, recreation and nonfarm enterprises for the following purposes, when such purposes are essential to the operation:

(i) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, worms, birds, bees, tools, and inventories, or to purchase an individual undivided interest in such items.

(ii) Payment of annual operating expenses.

(iii) Payment of family living expenses.

(iv) Refinancing debt incurred for any authorized operating loan purpose, including FmHA insured loans.

(v) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(vi) Purchase and repair of essential home equipment.

(vii) Purchase of milk base or milk quota with or without cows.

(viii) Not more than $7,500 in a fiscal year for real estate improvements or repairs. The following determinations must be made by the lender before a guaranteed OL loan is made for real estate improvement:

(A) Loans will not be needed year after year for this purpose.

(B) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(ix) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(x) Purchase of a franchise, contract or privilege when necessary to the operation of the planned enterprise.

(xi) Partial payment for the purchase and construction of crop, storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(2) *Contract of Guarantee—Line of Credit.* Lines of credit may be advanced for farm, forestry, recreation and nonfarm enterprises for the following purposes, when such purposes are essential to the operation:

(i) Payment of annual operating expenses, which may include the purchase of feeder animals, and family living expenses.

(ii) Payment of debts incurred by the borrower for current annual operating expenses that were advanced by the lender and/or other creditors/suppliers prior to the issuance of the guarantee. In no case will carryover debts from previous crop years be refinanced.

(d) *Loan limitations.* (1) The total outstanding insured and guaranteed OL principal balance owed by the loan applicant or owed by anyone who will sign the note as a cosigner may not exceed $400,000 at loan closing. The amount of principal outstanding at any one time on a guaranteed line of credit must never exceed the ceiling set out on the Contract of Guarantee.

(2) Loans may not be made for:

(i) The purchase of real estate,

(ii) Making principal payments on real estate,

(iii) The payment of land lease costs under any program including cash rent,

(3) Guaranteed lines of credit *will not* be used for capital expenditures.

(4) Loans also may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

(5) Multiple Guarantees. More than one Loan Note Guarantee or Contract of Guarantee may be executed with the same or different lenders to a borrower so long as each loan/line of credit is secured with separate collateral that is clearly identified. This requirement does not preclude cross-collateralization of loans/lines of credit with other guaranteed loans/lines of credit to obtain additional collateral provided that the loans/lines of credit are held by the same lender. Total loans or line of credit ceilings must not exceed $400,000 at any time.

(e) *Interest rates.* (1) The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender.

(2) The lender may charge a rate *not to exceed* the rate the lender charges its average farm customer. Average farm customers are those conventional borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as saving accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(3) Except for Farm Credit System member institutions, if a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. The interest rate on loans made by a Farm Credit System member institution will be a fixed or variable rate based on their administrative and borrowing costs. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument.

(4) The lender, borrower and holder (if any) may collectively effect a temporary reduction in the interest rate of the OL loan/line of credit when processing an Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate; however, no new note(s) or line of credit agreement(s) may be issued. If the amendment is attached to a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days.

(5) Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(f) *Terms.* (1) The final maturity date for each loan/line of credit cannot exceed 7 years from the date of the promissory note/line of credit agreement.

(2) All advances on a line of credit must be made within 3 years from the date of the Contract of Guarantee.

(3) Ordinarily, loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will be scheduled for payment when the income from the year's operation is to be received. Under certain circumstances these payments may be scheduled over longer periods. Circumstances which warrant an extended repayment schedule are factors such as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established or during recovery from disaster or economic reverses. Crops only are not sufficient security when repayment is scheduled over the longer period.

(4) Advances for purposes other than those for annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of seven years.

(5) When conditions warrant, installments scheduled in accordance with paragraph (f)(3) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments there must be adequate collateral for the loan/line of credit at the time the balloon installment becomes due. In no case will annual crops and/or machinery be used as the sole collateral securing a loan with a balloon installment. Circumstances which warrant balloon payments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from economic reverses. The amount ballooned should not exceed that which the borrower could reasonably expect to pay during a maximum additional 15-year period except for NFE loans, which will be a maximum additional 7 years. The applicant must be advised before the loan is closed that the lender will review each case at the end of the initial loan term to determine if such

rescheduling is warranted. (See § 1980.124 of this subpart.)

(g) *Security.* Ordinarily, the security must be adequate in the opinion of the lender and FmHA to assure repayment of the loan/line of credit. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the lender and FmHA (provided the FmHA approval official's opinion is based on the evaluation set forth in § 1980.114 of this subpart) in determining whether loan/line of credit should be made. However, when a loan is made for refinancing purposes, the amount refinanced may not exceed the value of the security. The loan/line of credit must be secured by a first lien on all property or products acquired or produced with loan funds and by any additional security needed. Any loans made for refinancing when the debt refinanced is secured by real estate or chattels will be secured by a first lien on the property securing the debt which is being refinanced or when the debt refinanced is secured by a junior lien on real estate which is no lower than the lien presently held on the property securing the debt being refinanced, and by any additional security needed. Additional security may consist of the best lien obtainable on chattels, real estate or other property.

(h) *Special security requirements.* When guaranteed OL loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed OL loan(s) as individual(s) *or* when guaranteed OL loans are made to eligible *individuals*, who are members, stockholders, partners or joint operators of an entity which is presently indebted for a guaranteed OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(i) *Insurance.* Insurance for property, public liability, and crops should be obtained before or at the time of loan closing.

(1) *Chattel property.* (i) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and those crops will serve as security for the loan, crop insurance will be required, if available for the area, as a loan approval condition. The lender will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies). *However, when only a crop lien is taken as security, the borrower will be required to carry Federal or other type of crop insurance during the repayment period of such loan(s), if such insurance is available.*

(ii) In all other cases, borrowers should be encouraged to carry insurance on chattel property, including growing crops, which serves as security for a loan and on other chattel or real property, in order to protect themselves against losses resulting from hazards existing in an area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies, and inventory centrally stored over an extended period. Such insurance may be required by the loan approval official in individual cases.

(2) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debts for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the guarantee is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, to apply to debts secured by prior liens, or to apply to the guaranteed OL loan/line of credit being made.

(3) *Public liability and property damage.* Borrowers, receiving loans for farm, recreational, or nonfarm enterprises should be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on a customer's property in the custody of the borrower.

(j) *Other considerations.* (1) Applicants will be advised by the lender that they are expected to comply with any applicable special laws and regulations.

(2) Applicants receiving loans for nonfarm enterprises will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance.

**§§ 1980.176—1980.179 [Reserved]**

**§ 1980.180 Farm Ownership loans.**

(a) *Objectives.* The basic objectives of the guaranteed FO loan program are to assist eligible applicants to become owner-operators of family farms, to make efficient use of land, labor and other resources, to carry on sound and successful operations on the farm and to enable farm families to have a reasonable standard of living. The operations may include establishment or enlargement of nonfarm enterprises to supplement the farm income.

(b) *Farm ownership loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee or the Contract of Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 449–6, "Application for Guaranteed Loan," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(1) An individual must:

(i) Be a citizen of the United States (See § 1980.106 (b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district. (See Exhibit B of Subpart A

of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) Possess the legal capacity to incur the obligations of the loan.

(iii) Have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iv) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(v) Honestly try to carry out the conditions and terms of the loan.

(vi) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(vii) Be the owner-operator of not larger than a family farm after the loan is closed.

(2) A cooperative, corporation, partnership, or joint operation must:

(i) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its members, stockholders, partners, or joint operators, as individuals.

(ii) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made.

(iii) Consist of members, stockholders, partners or joint operators who are individuals and not a cooperative(s), corporation(s), partnership(s), or joint operation(s).

(iv) If the members, stockholders, partners or joint operators holding a majority interest are related by marriage or blood:

(A) They must be citizens of the United States [see § 1980.106 (b)(21) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(B) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 3 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(C) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(D) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(E) At least one member, stockholder, partner or joint operator must operate the family farm.

(F) The entity must own *and* operate the farm *and* be authorized to do so in the State(s) in which the farm is located.

(v) If the members, stockholders, partners or joint operators holding a majority interest are *not* related by marriage or blood:

(A) The requirements of paragraphs (b)(2)(iv)(A) through (D) and (F) must be met.

(B) They and the entity itself must own *and* operate the family farm.

(vi) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (1) all of the members of the entity are related by blood or marriage, (2) all of the members are or will be operators of the entity, and (3) the majority interest holders of the entity meet the requirements of paragraphs (b)(2)(iv)(A) through (D) and (F) of this section.

(c) *Loan purposes.* Loans that are consistent with all Federal, State and local environmental quality standards may be made for authorized loan purposes. The following are authorized purposes:

(1) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(i) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(ii) An applicant's portion of the cost of land which is being subdivided.

(iii) Making a downpayment on the purchase of land under the following conditions:

(A) A deed is obtained by the applicant and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(B) The applicant can meet the loan terms under normal farm conditions.

(C) The conditions and the requirements of any prior mortgage or contract meet the security requirements for taking a junior lien as shown in paragraph (f)(2)(iii) of this section.

(D) A purchase contract is signed which obligates the purchaser or contract meet the security requirements for the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(2) Construct, buy, or improve buildings and facilities needed on the applicant's farm, including:

(i) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which will not exceed that owned by typical family farmers in the area.

(ii) The improvement, alteration, repair, replacement, relocation or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(3) Provide land and water development, pollution control and energy saving measures, acquire water

supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the water and rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the lender.

(i) Funds may be used to pay for development costs on land owned with defective title (see paragraph (f)(2) of this section) or on land in which the applicant owns an undivided interest, provided:

(A) The amount of loan funds used on such land is limited to $25,000;

(B) There is adequate security for the loan; and

(C) The tract with defective title or undivided interest is not included in the appraisal report.

(ii) Funds may be used to pay for development costs on land leased by the applicant provided:

(A) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(B) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(C) There is adequate security for the loan; and

(D) The amount of loan funds used for improvements on leased land will not exceed $10,000.

(4) Refinance debts subject to the following:

(i) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(ii) The lender will verify the need to refinance all secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(5) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, first year insurance premiums, and loan fees authorized in § 1980.22 of Subpart A of this part, which are required to be paid by the borrowers and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(6) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland.

(7) Purchase any stock in a cooperative lending agency that is necessary to obtain the loan.

(d) *Loan limitations.* A guaranteed FO loan will not be approved if:

(1) The total outstanding insured or guaranteed FO, Soil and Water (SW) or Recreation (RL) loans principal balance owed by the applicant or owed by anyone who will sign the note as a cosigner will exceed the lesser of $300,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The loan purpose will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

(e) *Rates and terms.* (1) Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(2) *Interest rates.* (i) The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender.

(ii) The lender may charge a rate *not to exceed* the rate the lender charges its average farm customer. Average farm customers are those conventional borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as saving accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(iii) Except for Farm Credit System member institutions, if a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. The interest rate on loans made by a Farm Credit System member institution will be a fixed or variable rate based on their administrative and borrowing costs. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument.

(iv) The lender, borrower and holder (if any) may collectively effect a temporary reduction in the interest rate of the OL loan/line of credit when processing an Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate; however, no new note(s) or line of credit agreement(s) may be issued. If the amendment is attached to a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days.

(v) Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(vi) At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(3) Installments on loans may be deferred in accordance with § 1980.124 (d) of this subpart.

(f) *Security.* (1) Each guaranteed FO loan will be secured by real estate only or by a combination of real estate and chattels or other security.

(2) When obtaining real estate security the following will apply:

(i) A mortgage will be taken on the entire farm owned or to be owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(A) The applicant's title to that part of the farm is defective, and cannot be cleared at a reasonable cost provided:

(*1*) The lender determines the applicant's interest is of such nature that it is not mortgageable;

(*2*) To include the land would complicate loan servicing or liquidation; and

(*3*) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(*4*) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property, where purchase money or improvements are not involved.

(B) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided the part excluded from the security is not included in the appraisal report.

(C) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(ii) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(iii) Loans may be secured by a junior lien on real estate provided:

(A) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's or the lender's interest or the applicant's ability to pay the guaranteed FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government and the lender are concerned.

(B) Agreements are obtained from prior lienholders to give notice of foreclosure to the lender whenever State law or other arrangements do not require such a notice.

(iv) Any loan of § 10,000 or less may be secured by the best lien obtainable without title clearance or legal services normally required, provided the lender believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when land is to be purchased.

(3) Loans may be secured by chattel subject to the following conditions:

(i) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(ii) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(iii) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(iv) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(v) The lender is responsible for obtaining the lien on chattel security and keeping it effective as notice to third parties.

(4) Other items or property may be taken as additional security when needed. These include:

(i) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership. If any of these do not pass with a change of ownership, the lender will identify such items and include them in an appropriate security instrument or assignment.

(ii) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation such as the cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any such property must have security value and be transferable.

(5) For the State of Hawaii—FO loans on leasehold interests on real property. The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, must have prior National Office approval before being issued.

(g) *Special requirements.* The lender is responsible for making a preliminary determination as to whether a loan can be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm; roads, schools, markets, or other community facilities; tax rates and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm operation, and development needed to make it a suitable farm.

(2) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings ordinarily will be located on the applicant's farm. Exceptions to this requirment are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully. A real estate lien will be taken on such dwelling.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home. A mobile home will not be considered to add value to the farm but FO guaranteed loan funds may be used to finance anchoring the home.

(3) Development needed to make the farm and any nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. The applicant should obtain the recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups to be included in the development plan and in the operating plan. In planning such development with the applicant, the lender will encourage the applicant to use any cost-sharing assistance that may be available through any sources such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(4) Insurance on buildings and other property, and insurance available in flood and mudslide hazard areas, will be obtained as required by the lender. Applicants receiving loans for nonfarm enterprises will be advised by the lender of the possibility of incurring liability and will be encouraged to obtain public liability and property damage insurance. Chattel security should be insured against losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the lender and the Government.

(5) When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary for the lender to determine that:

(i) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(ii) Any off-farm employment the applicant depends on is likely to continue.

(6) Nonfarm enterprises will be analyzed by the lender to determine soundness.

(7) Other assets not used directly in the farming operation will be handled as follows:

(i) A guaranteed FO loan may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(A) The real estate furnishes employment or income which is essential to the applicant's success.

(B) Sale of the property will not eliminate the need for FmHA guaranteed credit.

(C) Retention of the real estate will not cause the operation to be larger than a family farm.

(ii) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree in writing to dispose of the property as soon after closing as possible. Under no circumstances may the property be held for more than three years after closing.

(iii) The applicant must agree to use the proceeds from the sale of other real estate to:

(A) Pay costs and taxes connected with the sale;

(B) Reduce the FmHA guaranteed debt or any prior lien;

(C) Make essential capital purchases; or

(D) Pay essential farm and home expenses.

(iv) Real estate or an interest in real estate which is retained after loan closing, but which is not part of the farm will not be included in:

(A) The appraisal report.

(B) The security instrument for the loan.

(C) The total debt against the security.

(8) When life estates are involved, loans may be made:

(i) To both the life estate holder and the remainderman, provided:

(A) Both have a legal right to occupy and operate the farm; and

(B) Both are eligible for the loan; and

(C) Both parties sign the note and mortgage.

(ii) To the remainderman only, provided:

(A) The remainderman has legal right to occupy and operate the farm; and

(B) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(iii) To the life estate holder only, provided:

(A) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(B) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(9) A loan will not be approved if a lien junior to the lender's lien securing the guaranteed loan is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the guaranteed loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.

(10) *Special security requirements.* When guaranteed FO loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed FO loan(s) as individual(s) *or* when guaranteed FO loans are made to eligible *individuals*, who are members, stockholders, partners or joint operators of an entity which is presently indebted for a guaranteed FO loan(s), security must consist of:

(i) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(ii) Different lien positions on real estate are considered separate and identifiable collateral.

**§§ 1980.181—1980.184** [Reserved]

**§ 1980.185 Soil and Water loans.**

(a) *Objectives.* The basic objectives of the guaranteed SW loan program are to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation; water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State, and local environmental quality standards. Achieving these objectives should help farmers to make needed land-use adjustments and should lessen the impact of adverse weather conditions on farming operations.

(b) *Soil and Water loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee or the Contract of Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and

the four succeeding crop years. Applicants will attest on Form FmHA 449-6, "Application for Guaranteed Loan," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(1) An individual must:

(i) Be a citizen of the United States (see § 1980.106 (b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) Possess the legal capacity to incur the obligations of the loan.

(iii) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(iv) Honestly try to carry out the conditions and terms of the loan.

(v) Be unable to obtain sufficent credit without a guarantee to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(vi) Be the owner or operator of a farm after the loan is closed.

(vii) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the guaranteed loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(2) A cooperative, corporation, partnership or joint operation must:

(i) Along with all of its members, stockholders, partners, or joint operators have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(ii) Along with all of its members, stockholders, partners, or joint operators, honestly try to carry out the conditions and terms of the loan.

(iii) Consist of members, stockholders, partners or joint operators holding a majority interest who are citizens of the United States (see § 1980.106 (b)(21) of this subpart for the definition of "United States"), or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(iv) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(v) Be unable to obtain sufficient credit without a guarantee, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of

(vi) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(vii) Be the owner or operator of a farm after the loan is made.

(viii) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(ix) Consist of members, stockholders, partners or joint operators who are *individuals* and not corporation(s), partnership(s), cooperative(s), or joint operations.

(c) *Loan purposes.* Loan purposes must be consistent with all Federal, State and local environmental quality standards and funds may be used to:

(1) Pay the costs for construction, materials, supplies, equipment, and services related to land and water development, use, conservation; and energy saving measures related to soil and water conservation, such as:

(i) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(ii) Drainage of land which is part of an operating farm unit.

(iii) Land clearing.

(iv) Sodding, subsoiling, land leveling liming and fencing.

(v) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(vi) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(vii) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(viii) Reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, engineering or other technical services, hazard insurance premiums, and loan fees authorized in § 1980.22 of Subpart A of this part, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(ix) Purchase or repair of special-purpose equipment such as terracing, land leveling and ditching equipment, provided:

(A) Such equipment is needed and will facilitate the completion or maintenance of the planned improvement, and

(B) The cost of the equipment plus the other cost related to improvement will not be more than if performed by a contractor or by another method.

(2) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste

pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures if necessary to comply with such pollution abatement requirements.

(3) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(i) The purchase of water stock or membership in an incorporated water user association.

(ii) The acquisition of a water right through appropriation, agreement, permit, or decree.

(iii) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(A) The value of the land without the water supply or right is only an incidental part of the total price; and

(B) The water supply and right will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(4) Refinance debts subject to the following:

(i) The debts were incurred for authorized guaranteed SW loan purposes.

(ii) All development or repair work conforms to FmHA standards or those standards will be met with the guaranteed loan.

(iii) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(iv) The lender will verify the need to refinance all secured and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(5) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(6) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service (ASCS) or the Soil Conservation Service (SCS) only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the lender.

(7) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(8) Pay costs of land and water development, use, and conservations essential to the applicant's farm, subject to the following:

(i) Such a loan may be made on land with defective title owned by the applicant (see paragraph (g) of this section) or on land in which the applicant owns an undivided interest providing:

(A) The amount of funds used on such land is limited to $25,000,

(B) There is adequate security for the loan, and

(C) The tract is not included in the appraisal report.

(ii) Such a loan may be made on land leased by the applicant providing:

(A) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life.

(B) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated.

(C) There is adequate security for the loan.

(9) Purchase any stock in a cooperative lending agency that is necessary to obtain the loan.

(d) *Loan Limitations.* A guaranteed SW loan will not be approved if:

(1) The total outstanding insured or guaranted SW, FO or RL loan principal balance owed by the applicant or owed by anyone who will sign the note as a cosigner will exceed the lesser of § 300,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The loan purpose will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

(e) *Rates and terms.* (1) Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(2) *Interest rates.* (i) The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender.

(ii) The lender may charge a rate *not to exceed* the rate the lender charges its average farm customer. Average farm customers are those conventional borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as saving accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(iii) Except for Farm Credit System member institutions, if a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. The interest rate on loans made by a Farm Credit System member institution will be a fixed or variable rate based on their administrative and borrowing costs. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument.

(iv) The lender, borrower and holder (if any) may collectively effect a temporary reduction in the interest rate of the OL loan/line of credit when processing an Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate; however, no new note(s) or line of credit agreement(s) may be issued. If the amendment is attached to a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days.

(v) Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(3) Installments may be deferred in accordance with § 1980.124 (d) of this subpart.

(f) *Security.* (1) Each guaranteed SW loan will be secured by real estate, chattels, other security, leaseholds or a combination of these.

(2) When obtaining real estate security, the following will apply:

(i) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(A) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(*1*) The lender determines the applicant's interest is of such nature that it is not mortgageable; and

(*2*) To include the land would complicate loan servicing or liquidation; and

(*3*) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(*4*) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(B) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided the part excluded from the security is not included in the appraisal report.

(C) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(ii) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(iii) Loans may be secured by a junior lien on real estate provided:

(A) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's or the lender's interest or the applicant's ability to pay the guaranteed loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government and the lender are concerned.

(B) Agreements are obtained from prior lienholders to give notice of foreclosure to the lender whenever State law or other arrangements do not require such a notice.

(iv) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services normally required, provided the lender believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when land is to be purchased.

(3) Loans may be secured by chattels subject to the following conditions:

(i) Real estate security is inadequate to secure the loan or is not available at all.

(ii) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(iii) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(iv) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(v) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need be required if the stock represents the right to receive water and is transferable separately from the land, provided:

(A) There is a market for the stock.

(B) The purchase price is no greater than the price at which stock in the water company is normally sold.

(vi) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(vii) The lender is responsible for obtaining the lien on chattel security and keeping it effective as notice to third parties.

(4) Other items or property may be taken as additional security when needed. These include:

(i) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership. If any of these do not pass with a change of ownership, the lender will properly identify such items and include them in an appropriate security instrument or assignment.

(ii) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation such as the cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any such property must have security value and be transferable.

(5) A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(i) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure that the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(ii) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the lenders's security. Any provisions which may jeopardize the lender's security must be limited, modified, waived or subordinated in favor of the lender.

(iii) With respect to achieving the purpose of the loan, obtaining adequate security, and being able to service the loan and enforce its rights, the lender, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the mortgage on the leasehold interest, the lender should consider whether or not:

(A) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(B) The right to foreclose the mortgage and sell without restriction would adversely affect the saleability or market value of the security.

(C) The lender has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(D) The lender has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit.

(E) The borrower has the right, in the event of default or inability to continue with the lease and the loan, to transfer

the leasehold, subject to the mortgage, to an eligible tranferee who will assume the guaranteed SW debt.

(F) Advance notice will be given to the lender of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit the lender to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, permit appropriate action by the lender to be taken.

(G) There are express provisions covering the question of the lender's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during the lender's occupancy or ownerhip, pending further servicing or liquidation.

(H) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(I) Any other provisions are necessary to obtain an interest which can be mortgaged.

(iv) The following language or similar language which is legally adequate will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of ____ years beginning on _____, 19____, created and established by a certain Lease dated _____, 19____, executed by _____ as lessor(s), recorded on _____, 19____, in Book _____, page ____ of the _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

"Borrower will pay when due all rents and all other charges required by said Lease, will comply with all other requirements of said Lease and will not surrender or relinquish without the lender's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said lease while this instrument remains in effect?"

(g) *Special requirements.* (1) When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan and in the operating plans. In planning such development with the applicant, the lender will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(2) Applicants are responsible for obtaining all the technical assistance required in connection with a guaranteed SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(3) Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(i) The land to be irrigated is suitable for irrigation.

(ii) The applicant has a right to use water for irrigation.

(iii) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(iv) If irrigation specialists have prepared any feasibility studies, copies of these studies should be submitted to the lender.

(4) Insurance on building and other property, and insurance available in flood and mudslide hazard areas, will be obtained as required by the lender. Chattel security should be insured against losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the lender and the Government.

(5) When life estates are involved, loans may be made:

(i) To both the life estate holder and the remainderman, provided:

(A) Both have a legal right to occupy and operate the farm; and

(B) Both are eligible for the loan; and

(C) Both parties sign the note and mortgage.

(ii) To the remainderman only, provided:

(A) The remainderman has a legal right to occupy and operate the farm; and

(B) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(iii) To the life estate holder only, provided:

(A) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(B) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(6) A loan will not be approved if a lien junior to the lender's lien securing the guaranteed loan is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the guaranteed loan, unless the total debt against the security would be within its market value.

(7) *Special security requirements.* When guaranteed SW loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed SW loan(s) are made to eligible *individual(s), or* when guaranteed SW loans are made to eligible *individuals,* who are members, stockholders, partners or joint operators of an entity which is presently indebted for a guaranteed SW loan(s), security must consist of:

(i) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(ii) Different lien positions on real estate are considered separate and indentifiable collateral.

**§§ 1980.186–1980.199 [Reserved]**

**§ 1980.200 OMB control number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0079.

123. In Part 1980, Subpart B, the text of Exhibit A preceding Attachment 1 is revised to read as follows:

**Exhibit A to Subpart B—Approved Lender Program—Farm Ownership and Operating Loans**

I. *General:* This Exhibit provides policies and procedures to establish an Approved Lender Program (ALP) for Guaranteed Operating Loans (OL) described in § 1980.175 and Farm Ownership (FO) Loans described in § 1980.180 of this subpart. The objectives are to minimize time required by approved lenders in obtaining response to request for a guarantee, eliminate the requirement of having Form FmHA 449–35, "Lender's Agreement," or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)," executed for each loan or line of credit guaranteed by Farmers Home Administration (FmHA), permit maximum use of forms normally used by the lender, require lender to provide FmHA a credit analysis and reduce the workload responsibilities of FmHA. FmHA will make the final determination on eligibility, loan purposes and repayment terms. The ALP agreements, Attachments 1 and 2, will serve as the "Lender's Agreement" for guarantees issued by FmHA under this Exhibit. Attachment 1 is the Lender's Agreement to be executed in relation to regular term loans. Attachment 2 is the Lender's Agreement that is to be executed in relation to lines of credit. The lender, in its

application, should indicate the type(s) of advances to be made.

A. *Authority.* The authorizations contained in this Exhibit provide: (1) Methods for initial approval period, subsequent approval period(s) and revocation of ALP status. (2) Methods an ALP lender will use to process, service and conclude guaranteed OL and FO loans. (3) Methods FmHA will use to consider an ALP lender's request for guarantee and monitor guaranteed OL and FO loan activities.

B. *Policy.* The purpose of an ALP is to expand the guaranteed OL and FO programs, supplement present insured loan authority, and make credit available to not larger than family farm owners and/or operators who are presently in a "credit availability gap." The "credit availability gap" farmers are those who slightly exceed FmHA's insured loan eligibility criteria but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender.

II. *Lender Approval, Subsequent Approval Period(s) and Revocation of ALP Status.*

Lenders who meet the required and other criteria may be granted ALP status for a period not to exceed 2 years by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of ALP status will be in the form of an agreement signed by the State Director and the lending institution. The agreement will be Attachment 1 and/or Attachment 2 of this Exhibit. The agreement will not apply to branches or suboffices of the lender unless specifically named in the agreement. In cases involving the Farm Credit System (FCS), the State Director shall give ALP status, within the State Director's area of jurisdiction, to any FCS member institution provided such members do not have loan losses which either do not exceed 6 percent per year for each of the three previous years or 18 percent of the institution's average loan portfolio computed for the three previous years. FCS member institutions having an acceptable loan loss percentage as specified above are exempt from complying with requirements of paragraph II A (1) (a) through (d) and (2). The FCA will notify the FmHA Administrator in writing annually or sooner of any FCS member institution that has loan losses within the acceptable percentage specified above.

To obtain ALP status, an FCS member institution with an acceptable loan loss percentage need only execute the agreement (Attachment 1 and/or Attachment 2 of this Exhibit) and satisfy the State Director that it is using acceptable forms as provided in paragraph II A (1)(e). Even if an FCS member institution is not identified by FCA as having an acceptable loan loss percentage, that institution may still request the State Director to consider it for ALP status under paragraphs II A (1) and (2). When FCS member institutions reorganize into one association, the reorganized association must be considered for ALP status as an initial applicant with unacceptable loan losses. Except for those FCS member institutions identified by FCA as having an acceptable loan loss percentage, ALP status will expire at the end of any approved 2-year period unless the lender applies for a new agreement which can be approved by the appropriate State Director. The ALP status of *any* lender may be revoked by the FmHA State Director as outlined in paragraph C. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State supplements, of the names and addresses of all lending institutions, branches or suboffices that hold ALP status. The name of each ALP lender's designated person or agricultural loan officer who will process and service guaranteed loans for the ALP lender will be included.

A. *Lender Approval.* Any lender who desires to apply for ALP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of this part. Except for FCS member institutions having an acceptable loan loss percentage as specified in the introductory text to paragraph II, lenders who meet this requirement and desire ALP status will prepare a written request to the State Director for the State in which they desire to have ALP status. The written request will address each item of "required criteria" and "optional criteria" contained in paragraph 11 A (1) and (2) and may be accompanied by any supporting evidence or other information the applicant lender believes will be helpful to the State Director in making a decision on the application for ALP status. Any FmHA County, District or State Office may provide a lender who desires to apply for ALP status, a complete copy of Subparts A and B of this part, including a copy of this Exhibit, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the applicant lender within 15 days of receipt of a request that the request is approved, denied, or requires additional information. The application material will be retained by the State Director for all approved lenders and periodic checks will be made by FmHA personnel to insure the lender's performance is as outlined in the application.

(1) *Required Criteria.* Other than as noted in paragraph II A above, before a State Director approves a lender, including an FCS member institution that is not identified by FCA as having an acceptable annual percentage of loan losses, for ALP status, the requirements listed in paragraphs II A (1) (a) through (f) must be met. However, upon the request of a lender asking for ALP status. The State Director may exempt that lender from complying with the requirement of paragraph II A (1) (b) provided the lender complies with all the other requirements listed in paragraph II A (1) If the State Director is satisfied that the lender—without regard to the requirement for the exemption is being requested—is an acceptable agricultural lender with the ability to adequately make and service agricultural loans.

(a) Provide evidence of being an "Eligible Lender" as defined in Subpart A of this part.

(b) Provide information to show that agricultural loan losses—net of recovery—do not exceed the following:

(i) For FCS member institutions, either 6 percent per year of the institution's total loan portfolio for each of the three previous years or 18 percent of the institution's average loan portfolio computed for the three previous years; *or*

(ii) For all other lenders, either 1½ percent per year of the lender's total loan portfolio for each of the three previous years or 4½ percent of the lender's average loan portfolio computed for the three previous years.

(c) Have the capacity to process and service FmHA guaranteed FO loans and guaranteed OL loans/lines of credit.

(d) Designate a person(s) who will process and service FmHA guaranteed OL loans/lines of credit and FO loans and agree for the person(s) to attend training sessions provided by FmHA.

(e) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans/lines of credit. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, record keeping methods, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for ALP status. See § 1980.109 and § 1980.113 of this subpart for required forms.

(f) Agree to abide by all applicable conditions of § 1980.60 of Subpart A of this part for all loan guarantees.

(2) *Optional Criteria:* Exceptions to the following criteria may be made at the discretion of the State Director, but a denial by a State Director is not appealable.

(a) Have experience and familiarity with FmHA insured and guaranteed loan programs. State length of time and types of loans/lines of credit.

(b) Establish that at least $2.5 million or 50 percent (whichever is less) of total loan portfolio is in agricultural loans.

(c) Provide a resume of designated person who will process and service guaranteed FmHA loans/lines of credit. Minimum of 30 college hours in agricultural science, training in Agriculture Economics and at least (2) years experience in making and servicing agricultural type loans for production and for real estate purposes is required. If the designated person also performs appraisal duties a qualification statement will be included.

(d) Provide a copy of most recent Statement of Condition and description of current level of agricultural and other lending activities.

(e) Demonstrate a potential capacity for guaranteed OL loan/line of credit and guaranteed FO loan activity in trade area. Must have ability to process and service at least 10 guaranteed OL and/or FO loans and/or OL lines of credit, subject to availability of funds, per fiscal year (October 1—September 30).

(f) Provide comments on experience or ability to comply with regulatory requirements, e.g., Environmental Assessments, Equal Opportunity, Flood and Mudslide, Clean Air, etc. (See §§ 1980.40 through 1980.46 of Subpart A of this part.)

(g) Agree to submit requests for guaranteed OL and/or FO loans and/or OL lines of credit to county official(s) in service areas after application is complete to coincide with

scheduled meetings of the local FmHA County Committee.

(h) Provide any other supplemental information the lender desires to submit.

B. *Subsequent Approval Period(s).* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, a new 2-year period of ALP status is not automatic. Lenders who desire to continue to ALP status are required to submit a request for subsequent approved periods at least 60 days prior to the expiration of any existing approved period. At least 30 days prior to the expiration of any approved ALP period, the State Director will complete a review of the ALP criteria, the lender's past performance, consult appropriate FmHA county and district personnel, and, if requested by the lender, determine if a new 2-year period of ALP status can be approved. The lender's request will be in writing to the State Director and contain, at a minimum, the following:

(1) A brief summary of activity as an ALP lender including number and dollar amount of guaranteed OL loan/lines of credit and/or FO loans extant, number and dollar amount processed during tenure as ALP, number and dollar amount now under consideration, potential guaranteed OL and/or FO lending activitity and recap of any loss settlements.

(2) A current update of data required in paragraph II A of this Exhibit and any proposed changes in agricultural loan officer(s), forms used, or operating methods used in guaranteed OL loan/line of credit and/or FO loan processing and servicing.

(3) Request for a new 2-year period of ALP status.

The State Director will promptly review the request, make any inquiry needed to arrive at a decision; and notify the ALP lender of approved ALP status for two years, or required conditions for approval, or denial with reasons.

C. *Revocation of ALP Status.* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, ALP status will lapse upon expiration of any 2-year approved period unless the lender obtains a new agreement under paragraph II B.

The State Director will revoke ALP status of any approved lender who fails to maintain "required criteria" as approved in the application for ALP status and may revoke status for failure to meet any "optional criteria" as agreed. Status shall also be revoked if the lender violates the terms of the ALP agreement, or fails to properly service any guaranteed loan or line of credit, or to protect adequately the interests of the lender and the Government. Furthermore, status, at the option of the State Director, may also be revoked if an FCS member institution that previously had acceptable loan losses as specified in the introductory text of paragraph II above is no longer identified by FCA as having acceptable losses.

State Directors will provide all county offices named in paragraph XVI of the ALP agreements (Attachment 1 and/or Attachment 2 of this Exhibit) with a copy of the agreement and complete application material approved in connection with ALP status. State Directors will monitor ALP lenders' loan making and security servicing activities, with the assistance of the District Director and periodic reports from the County Supervisor, to determine compliance with the ALP agreement and Subparts A and B of this part pertaining to guaranteed OL and FO loans. County Supervisors will use their copy of the ALP agreement to duplicate and place in the County office file for each loan guaranteed. In the event the State Director determines an ALP lender is not adequately fulfilling all obligations of the agreement, the lender will be contacted and notified of any discrepancies. A maximum of 30 days will be provided to correct any deficiencies. If corrections are not made within 30 days, the lender's ALP status may be revoked in writing by the State Director. The revocation will be in the form of a letter, sent by certified mail, and state reasons for the action. Any outstanding guaranteed loan(s) or line(s) of credit shall continue to be serviced by a lender whose ALP status has expired or been revoked. The lender cannot submit requests for any new guarantees pursuant to this Exhibit, but may submit requests under the regular method outlined in this subpart for consideration.

III. *ALP Lender Responsibilities to Process, Service snd Liquidate Guaranteed OL Loans and Guaranteed FO Loans.*

A. *Processing.* Before accepting an application for a guaranteed loan or line of credit, the ALP lender will review Subparts A and B of this part. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in §§ 1975.175(b) or 1980.180(b) of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL loans/lines of credit and FO loans in §§ 1980.175 and 1980.180. All requests for guaranteed loans or lines of credit will be processed under Subparts A and B of this part except as modified by this Exhibit. The ALP lender will, for each application for a guaranteed loan or line of credit, obtain a Form FmHA 449-6, "Application for Guaranteed Loan (Farmer Programs)," signed by the applicant. The spplicant must complete and sign all parts of the Form FmHA 449-6 except information on crops, livestock and financial information obtained by the lender on forms of a similar nature. ALP lenders will process all guaranteed OL loans/lines of credit or FO loans as a "complete application" by obtaining and completing all required items described in § 1980.113(d) of this subpart except Form FmHA 449-12, "Request for Loan Note Guarantee." Attachment 3 to this Exhibit will be used by ALP lender to request a guarantee from FmHA. An ALP lender will only be required to submit Form FmHA 449-6 and information on crops, livestock and financial condition on forms previously approved for use under paragraph II A of this Exhibit and Attachment 3 of this Exhibit, with any supportive information attached, to FmHA for making application for a guarantee. A guaranteed OL loan/line of credit or FO loan will not be closed by an ALP lender prior to receipt of Form FmHA 449-14, "Conditional Commitment for Guarantee" or Form FmHA 1980-15, "Conditional Commitment for Guarantee (Line of Credit)," and the making of a determination that required all conditions, including the certification required by § 1980.60 of Subpart A of this part can be met.

The ALP lender will be responsible for fully securing the OL loan or line of credit under § 1980.175(g) or FO loan under § 1980.180(f) of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

B. *Servicing.* ALP lenders will be fully responsible for servicing and protecting the collateral for all loans/lines of credit guaranteed.

C. *Liquidation of Loans/Lines of Credit.* Any liquidation of guaranteed OL loans or lines of credit or FO loans will be completed by the lender. Loss claims will be submitted in acccordance with the ALP agreement on Form FmHA 449-30, "Loan Note Guarantee Report of Loss." The Report of Loss will be accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan/line of credit.

IV. *FmHA Actions.* FmHA will complete the evaluation described in § 1980.114 of this subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee. FmHA County Supervisor will review each Form FmHA 449-6 and request for a guarantee, compare material with the County office copy of ALP agreement, approved forms, and methods, and immediately contact the ALP lender within 3 working days if the information is not in accord with approved agreement, is not clear or is inadequate for County Committee review. County Supervisors may request additional information, review the lender's "complete application" file or make an independent evaluation of an application on Form FmHA 449-23, "Guaranteed Loan Evaluation," if needed, to determine whether the applicant is eligible, the loan/line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. FmHA will make the final determinations on the eligibility of applicants for a guaranteed OL loan/line of credit or FO loan, and the purposes and terms of such loans/line of credit.

A. If the County Supervisor's evaluation indicates the application is complete and acceptable, FmHA will provide the lender a County Committee determination of the borrower's eligibility within 14 days. This 14-day period will be contingent upon:

(1) Request for a guarantee being received by the appropriate FmHA county office at least 2 days before scheduled County Committee meetings. County Supervisors will keep ALP lenders advised of scheduled County Committee meetings.

(2) Employment dealings affecting County Committee meetings.

(3) Availability of a quorum of the FmHA County Committee

B. FmHA will monitor each ALP lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of § 1980.113 of this subpart. The FmHA County Supervisor will make a complete review of the first loan or line of credit developed by an ALP lender. FmHA will examine the lender file on each guaranteed loan/line of credit at least annually, and semi-annually or more frequently if warranted. The FmHA official who conducts these reviews will document the review in the FmHA County office file. Any discrepancies noted and not resolved will be reported to the State Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guarantee program complies with Subparts A and B of this part.

Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) dated_____." The date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 1.

Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee issued under Lender's Agreement for Operating Line of Credit Guarantee dated_____." The date will be the same date entered in paragraph XVIII of the Approved Lender's Agreement, Attachment 2.

The Lender's Agreement will be duplicated and a copy will be placed in the FmHA County Office file maintained for each Loan Note Guarantee and Contract of Guarantee issued.

124. Exhibit A, Attachment 3, to Subpart B of Part 1980 is revised to read as follows:

**Attachment 3**

To: County Supervisor, FmHA

Subject: Request for Loan Note Guarantee under Approved Lender Agreement Applicable to Loan Note Guarantee Cases (Attachment 1). Principal Amount of Loan $_____.

AND/OR

Request for Line of Credit Guarantee under Approved Lender Agreement Applicable to Contract of Guarantee Cases (Attachment 2). Line of Credit Ceiling $_____.

Principal Amount of Initial Advance $_____.

Lender Agreement Dated _____.

Lender IRS I.D. No. _____

Request is made for issuance of a guarantee(s) in the following case.

Applicant's Name _____

Address _____

Social Security or IRS Tax No. _____ County _____.

State ____

Percent Guarantee Requested ____%

Interest rate to borrower ____ % If variable, state method determined and frequency of adjustment

Specific amounts and purposes of loan/line of credit are as follows:

Proposed repayment terms:

Proposed closing date if request is approved: _____

Special or unique conditions or problems:

Applicant's Financial Condition: Net Worth $_____

| | Assets value | Debt | Amount due in 12 months |
|---|---|---|---|
| Current [1] | $ | | |
| Intermediate [2] | | | |
| Long Term [3] | | | |
| Totals | | | |

Ratio Calculation from Financial Information and Operating Plans:

Total Assets of $_____ divided by Total Liabilities $_____ = Net Capital Ratio _____

Annual Cash Operating Expenses $_____ divided by Gross Income $_____ = Operating Ratio _____

Net Income $_____ divided by Total Assets $_____ = Profits to Assets _____

Debt Repayment _____ divided by Gross Income _____ = Debt Repayment _____

Security proposed:

| Item | Value | Prior liens (if any) | Equity value |
|---|---|---|---|
| | | | |
| Totals | | | |

Briefly list any special condition and narrate security accounting, reporting limitations and supervision etc., contained in proposed loan/line of credit agreement. See 7 CFR Part 1980, Subpart B, § 1980.113(d)(7).

The applicant's total farming operation is as follows: (Include total acres owned and/or leased broken down to use and indicate irrigated, double crop, etc., if any. Include totals of all livestock owned and/or tended and describe operation purchasing, marketing, breeding details. Use attachments if necessary.)

The undersigned certifies that:

1. The information contained in this request is correct and that a complete application containing all required items described in § 1980.113(d) of Part 1980, Subpart B are on file and may be examined by FmHA at any time during regular business hours prior to or after FmHA responds to this request for a Loan Note Guarantee or Contract of Guarantee.

2. Before a Loan Note Guarantee or Contract of Guarantee is issued by FmHA, the lender will certify to conditions in § 1980.60 of 7 CFR Part 1980, Subpart A.

3. The lender will provide a Guarantee Loan Closing Report on Form FmHA 1980-19 and a check for the amount of the guarantee fee at the time the Loan Note Guarantee or Contract of Guarantee is issued.

4. This proposed loan/line of credit is considered sound, will be fully secured and is within the borrower's repayment ability.

5. All applicable requirements have been or will be met.

6. The loan or advance under the line of credit cannot be made without an FmHA guarantee.

(Name of Lender)

(Lender's IRS I.D. Tax No.)

By _____

Date _____

Title _____

1. Current assets include all cash or assets that can be easily converted to cash or used within a 12 month period—livestock to be sold, feed, grain, supply inventories, and notes and accounts receivable.

2. Intermediate assets usually cannot be converted to cash within a 12 month period, but as a rule have a productive life of 1 to 10 years. These assets contribute to the productivity of the business over several years—breeding livestock, machinery, equipment, etc.

3. Fixed (long term) assets also are needed to produce income, but they are not usually liquidated for the life of the business or at least for a period of 10 years or longer—usually land and buildings.

125. Exhibit D is revised to read as follows:

**Exhibit D—Interest Rate Buydown Program**

I. General.

This exhibit contains the policies and procedures pertaining to an Interest Rate Buydown Program for guaranteed Operating (OL) loans and lines of credit, described in § 1980.175 of this subpart, guaranteed Farm Ownership (FO) loans described in § 1980.180 of this subpart and guaranteed Soil and Water (SW) loans described in § 1980.185 of this subpart. Subparts A and B of Part 1980 are applicable to this exhibit except as modified by Exhibit A and Exhibit B of this subpart and this exhibit. Authority to enter into Interest Rate Buydown agreements expires September 30, 1988.

II. Introduction.

The authorities contained in this exhibit provide lenders with a tool to enable them to continue to provide credit to operations of

not larger than family farms who are temporarily unable to Project a positive cash flow on all income and expenses including debt service without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid on a loan/line of credit. In return, FmHA will make annual interest rate buydown Payments to the lender in an amount not more than 50 percent of the cost of reducing the interest rate on the loan. Payments made to a lender under this exhibit will in no case exceed 2 percentage points.

III. Definitions.

A. *Cash flow*—a projection listing on an annual basis, of all anticipated cash inflows (including all farm and non-farm income) and all expenses to be incurred by the borrower during such period (including all farm and non-farm debt service and other expenses). Production records and prices used in the preparation of a cashflow will be calculated in accordance with § 1980.113(d)(8) of this subpart.

B. *Interest Rate Buydown Agreement*—(Form FmHA 1980-58.) The signed agreement between FmHA, the lender, and the borrower, setting forth the terms and conditions of the interest rate buydown.

C. *Positive Cash Flow*—a cash flow projection, as defined in § 1980.106 (b)(17) of this subpart.

IV. Program Administration.

County Supervisors are authorized to approve interest rate buydown agreements providing the following requirements are met by the lender:

A. The measures for assessing borrower's financial viability will include considerations based on debt to asset ratios and returns on assets and, where applicable, returns on equity.

B. For those borrowers currently indebted for an FmHA guaranteed loan(s) or line(s) of credit where the guaranteed loan/OL line of credit is to be considered for an interest rate buydown under this exhibit, the lender must demonstrate that a positive cash flow projection on all income and expenses, including debt service, is not possible by rescheduling or reamortizing the account in equally amortized installments as described in § 1980.124 of this subpart. If a positive cash flow can be achieved using rescheduling or reamortizing authorities, subject to the requirements outlined in § 1980.124, the borrower's account will be rescheduled or reamortized. If a positive cash flow projection is then possible, the borrower is not eligible for an interest rate buydown.

1. For borrowers currently indebted for an FmHA guaranteed loan/line of credit who wish consideration under this exhibit, the lender will submit Attachment 2 of this exhibit with all requests for all interest rate buydowns.

2. In addition, the following information will be submitted by the lender:

(a) Verification of off-farm employment, if any.

(b) Form FmHA 440-32, "Request for Statement of Debts and Collateral," or similar documentation provided by approved lenders.

C. Applications from individuals who are not presently indebted for an FmHA guaranteed loan/line of credit shall be processed in accordance with § 1980.113 of this subpart snd this exhibit. In addition, the lender will submit Attachment 2 of this exhibit with the application. The lender must demonstrate that a positive cash flow projection is not possible without reducing the interest rate on the borrower's loan(s)/line(s) of credit.

D. In all cases, the lender and County Supervisor must determine whether the borrower owns any assets which do not contribute to essential family living expenses or to the maintenance of a sound farming operation. The lender must determine whether the borrower could sell these assets and, if so, for how much. The lender will then prepare new cash flow projections which take into account the sale of these assets. If a positive cash flow can then be achieved, the borrower is not eligible for a interest rate buydown.

E. If a positive cash flow cannot be achieved, the lender may ask other creditors to voluntarily adjust their debts as outlined in Subpart A of Part 1903 of this chapter. If other creditors adjust their debts and the proposed interest rate buydown results in a positive cash flow, interest rate buydown may be approved.

F. If a positive cash flow cannot be achieved, even with other creditors voluntarily adjusting their debts and the interest rate buydown, the interest rate buydown will not be approved.

G. In order for a borrower's loan to be eligible for an interest rate buydown, a typical plan of operation must show that a positive cash flow can be expected all during the buydown period. A loan/line of credit with a term greater than one year must show that a positive cash flow on all income and expenses, including debt service, can be demonstrated during each year of the buydown. All loans/lines of credit with terms exceeding the buydown period must demonstrate that the borrower will be able to project a positive cash flow on all income and expenses, including debt service, after the buydown agreement expires. Further, if the lender proposes a term for the interest rate buydown which exceeds one year, the lender will provide FmHA with future financial statements documenting the necessity for the increased term. In no case will the Federal buydown period exceed three years.

H. Any holder(s) must agree to the interest rate reduction in writing. If the holder does not consent to the interest rate reduction proposed by the lender, the lender must repurchase the unpaid portion of the loan from any holder(s) before the interest rate buydown can be granted. When FmHA purchases a portion of a guaranteed loan, buydown payments on that portion shall cease.

I. The Interest Rate Buydown Agreement will be attached to the promissory note(s) or line of credit agreement. The promissory note(s) or line of credit agreement, cannot exceed the interest rate the lender charges its average farm customer, prior to any writedown by the lender, as outlined in §§ 1980.175(e), 1980.180(e)(2), or 1980.185(e)(2) of this subpart. The lender may only charge a fixed rate of interest during the term of the buydown agreement. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate; however, no new notes or line of credit agreements may be issued. If the lender elects to use a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated *not to exceed* the average variable rate charged the lender's average farm customer (as defined in §§ 1980.175(e), 1980.180(e)(2), or 1980.185(e)(2) over the past 90 days. The promissory note(s), line of credit agreements and any attachments to these agreements, must schedule repayment in accordance with the terms for the applicable loan type set forth in §§ 1980.175 (f) and (g), 1980.180 (e) and (f), or 1980.185 (e) and (f) of this subpart.

J. FmHA will pay the lender any interest rate buydown equal to one-half of the lender's writedown of interest percentage points, except that such payments will in no case exceed the cost of reducing such interest by more than two percentage points. The lender will adjust its interest rate in increments of .25%, rounded to the nearest .25% necessary to a point equal to or exceeding that necessary to achieve a positive cash flow on any individual borrower's account.

V. Approval of interest rate buydown.

If the approval official determines the buydown will be approved in accordance with paragraph IV of this exhibit, in addition to the determinations required in § 1980.115 Administrative A and B, *the approval official will:*

A. Prepare Form FmHA 1940-1, "Request for Obligation of Funds." This form will be used to obligate the buydown portion for those loans presently guaranteed where the interest rate is subsequently bought down, and to obligate the loan and interest rate buydown for initial loans.

B. The approval official will execute Form FmHA 1940-1 and distribute copies in accordance with the FMI. The Finance Office will enter the obligation of funds on their records for the interest rate buydown and/or loan and notify the approval official by fowarding the original and one copy of Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request."

C. A loan or line of credit for which the interest rate was previously reduced under this exhibit, may receive a subsequent buydown provided the total buydown term(s) over the life of the loan does not exceed 3 years and the buydown is approved on or before September 30, 1988.

VI. Interest Rate Buydown Closing.

A. The lender will prepare and deliver a Form FmHA 1980-19, "Guaranteed Loan Closing Report," for each initial and existing guaranteed loan/line of credit in which the interest rate is bought down under this exhibit.

B. See § 1980.61(b)(1) and § 1980.118(c) Administrative B.

1. If FmHA finds that all requirements have been met, the lender, FmHA and the borrower will execute Form FmHA 1980-58, "Interest Rate Buydown Agreement." In NO CASE will Form FmHA 1980-58 be executed prior to the determination of availability of funds for the loan/line of credit and buydown as evidenced on Form FmHA 440-57, "Acknowledgement of Obligation of Funds/Check Request."

2. An original Form FmHA 1980-58 will be prepared for each note or line of credit agreement executed. All originals of Form FmHA 1980-58 will be provided to the lender and attached to the note(s) with the original Loan Note Guarantee or Contract of Guarantee. In the event the lender assigns the guaranteed portion of the loan to holder(s), or the holder(s) agree(s) to any reduction in interest rate, a copy of Form FmHA 1980-58 will be attached to the original Form FmHA 449-36, along with a copy of the borrower's note(s) with "allonge" and Loan Note Guarantee. Form FmHA 449-36 will be revised to reflect the note amounts. At the top of the face of the document type: "This Assignment Guarantee Agreement is subject to an attachment(s) to the promissory note dated _____ and Form FmHA 1980-58, "Interest Rate Buydown Agreement," which temporarily reduces the interest rate on the promissory note to an effective interest rate of ____%." This revision will be initialed and dated by the lender, holder, and FmHA. Copy(ies) of the Interest Rate Buydown Agreement will be kept in the County Office, attached to the appropriate Loan Note Guarantee or Contract of Guarantee. Additional copies may be retained by the State Office. Copies of all issued Interest Rate Buydown Agreements will be kept in the file.

3. Repurchase of loans presently guaranteed by FmHA eligible for interest rate buydown (Loan Note Guarantee cases only).

See Item number 10 of Form FmHA 449-36 and Item number 6 of Form FmHA 1980-58. When FmHA purchases a portion of the guaranteed loan, buydown payments on that portion shall cease. The interest rate reduction shall remain in effect.

VII. Interest Rate Buydown Claims and Payments.

Claims and payments will be processed in accordance with paragraph 3 of Form FmHA 1980-58, "Interest Rate Buydown Agreement." Such claims and payments will be processed in accordance with paragraph 2 of Form FmHA 1980-58.

VIII. Term of Buydown Agreement.

The term of a buydown agreement entered into under this exhibit shall not exceed 3 years or the outstanding term of the loan involving the interest rate buydown, whichever is less.

IX. Cancellation of Interest Rate Buydown.

Form FmHA 1980-58, "Interest Rate Buydown Agreement," is incontestable except for fraud or misrepresentation, of which the lender has actual knowledge at the time the Interest Rate Buydown Agreement is executed, or for which the lender participates in or condones.

X. Excessive Interest Rate Buydown.

Upon written notice to the lender, borrower and any holder(s), the Government may amend or cancel the Interest Rate Buydown Agreement and collect from the lender any amount of reduction granted which resulted from incomplete or inaccurate information (of which the lender was aware), an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

XI. Transfer and Assumption of Loans Involving Interest Rate Buydown.

Transfers will be processed in accordance with § 1980.123 of this subpart. The loan/line of credit will be transferred with the Interest Rate Buydown Agreement only in cases where the transferee was liable for the debt at the time the buydown was granted. Under no other circumstances will the buydown be transferred. If the buydown is necessary for the transferee to achieve a positive cssh flow, the lender must make application for an initial buydown under this exhibit.

XII. Review by FmHA Employees.

The lender will submit Form FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," annually along with detailed calculations and a statement of activity on the borrower's account to support the claim. The County Supervisor will approve, if correct, and forward to the Finance Office for payment. FmHA may review audit reports by the lender's supervising agency when buydown claims are involved.

**Attachment 1**

UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION (Location)

Dear_____:

The Farmers Home Administration (FmHA) has authority under the Food and Security Act of 1985 (Pub. L. 99-198) to temporarily make payments to lenders to reduce borrower interest rates on a guaranteed loan to eligible applicants and borrowers. The Interest Rate Buydown Program provides lenders with a tool to enable them to continue to provide credit to family farm operators who are temporarily unable to project a positive cash flow on all income and expenses, including debt service, without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid on a loan. In return, FmHA will make annual payments to the lender in an amount of not more than 50 percent of the cost of reducing the interest rate on the loan. Payments made to a lender under this authority may not exceed two percentage points.

Borrowers with existing guaranteed Farm Operating (OL), Farm Ownership (FO), and Soil and Water (SW) guaranteed loans, may have the interest rate on their loans bought down by FmHA.

If you would like additional information regarding the Interest Rate Buydown Program for guaranteed loans and how to apply, you should contact this office.

I will be glad to discuss this program in detail with you.

Sincerely,

County Supervisor

**Attachment 2**

To: County Supervisor, FmHA

_____

_____

Subject: Request for Interest Rate Buydown

Borrower's Name: _____

In connection with the subject application for an interest rate buydown, this lending institution certifies:

(1) The loan balance of $_____ is the amount requested for an interest rate buydown. If a line of credit, the line of credit balance is $_____, and the line of credit ceiling amount of $_____ is the amount requested for an interest rate buydown.

(2) (a) The interest rate charged the lender's average farm customer, determined in accordance with § 1980.175(e), § 1980.180(e)(2) or § 1980.185(e)(2) of this subpart, is _____%. (Specify fixed or variable. If variable rates are used, the average farm customer's variable rate for the past 90 days shall be inserted.)

(b) The lender's interest rate to the subject borrower prior to writedown is _____% (may not exceed (2)(a)).

(c) The lender's writedown is _____%.

(d) The interest rate to be charged with the writedown to the borrower is _____%.

(3) The amount of interest written down is permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt.

(4) The lender's interest rate reduction to the borrower will result in a reduced payment schedule for the term of the buydown and that a positive cash flow on all income and expenses, including debt service, will be expected during the buydown period. A loan/line of credit with a term greater than one year must show that a positive cash flow can be demonstrated during each year of the buydown. In cases where the term of the loan exceed the term of the buydown, the borrower is projected to have a positive cash flow on all income and expenses, including debt service, after the buydown period terminates.

(5) The borrower's cash flow projections have been prepared i accordance with Part 1980, Subpart B, § 1980.113(d)(18), and are attached to this document.

**WARNING:** Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States

knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulant statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulant statement or entry, shall be fined not more that $10,000 or imprisoned not more than 5 years, or both."

(Name of Lender)

Lender's IRS ID No.

By

Title

Date

Dated: December 31, 1986.

**Kathleen W. Lawrence,**

*Acting Under Secretary for Small Community and Rural Development.*

[FR Doc. 87-582 Filed 1-14-87; 8:45 am]

BILLING CODE 3410-07-M

federal register

Thursday
January 15, 1987

Part III

# Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 23, 36, 91, and 135
Airworthiness Standards and Operating Rules; Commuter Category Airplanes; Final Rule; Request for Comments

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 21, 23, 36, 91, and 135**

**[Docket No. 23516; Amdt. Nos. 21-59, 23-34, 36-13, 91-197, and 135-21]**

## Airworthiness Standards and Operating Rules; Commuter Category Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** These amendments to Parts 21, 23, 36, 91, and 135 of the Federal Aviation Regulations (FAR) adopt certification procedures, airworthiness and noise standards, and operating rules for an additional category of propeller-driven, multiengine airplane, designated as the Commuter Category. The amendment to Part 21 allows certification of commuter category airplanes by the same procedures applicable to other aircraft. The amendment to Part 23 adds airworthiness standards for airplanes with a maximum seating capacity, excluding pilot seats, of 19 or less, a maximum certificated takeoff weight of 19,000 pounds or less, and requires type certification compliance with the International Civil Aviation Organization (ICAO) Annex 8, Part III, requirements which apply to airplanes weighing in excess of 5,700 kilograms (12,566 pounds). The amendment to Part 36 adopts noise standards applicable to small, propeller-driven airplanes to be certificated in the commuter category. Parts 91 and 135 are amended to prescribe rules governing the operation of commuter category airplanes as required by the general operating and flight rules.

Since 1966, the FAA has been applying various additional airworthiness requirements to the certification of small airplanes, intended for use in air taxi operations, to achieve an acceptable level of safety when the affected airplanes are so utilized. These additional requirements were set forth in special conditions, Special Federal Aviation Regulation (SFAR) No. 23, Part 135 Appendix A, and SFAR 41. The SFARs were temporary rules intended only to provide relief to the industry and public from the lack of suitable certification procedures and standards while the FAA developed permanent rules. SFAR 23 ceased to be applicable after July 19, 1970, and SFAR 41 expired on September 13, 1983. This final rule, which adds the new commuter category, will set forth airworthiness requirements in Part 23 for airplanes intended for use in commercial operations. As a result of this action, airplanes certificated in the commuter category will achieve a level of safety requisite for commercial operations.

This document also requests comments on new seat and weight demarcations between small and large airplanes.

**DATES:** The effective date of these amendments is February 17, 1987. The closing date for comments is March 16, 1987.

**ADDRESS:** Comments on the proposed new demarcation lines are to be marked "Docket No. 23516" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (Docket No. 23516), 800 Independence Avenue SW., Washington, DC. 20591; or deliver comments in duplicate to: Room 916, 800 Independence Avenue SW., Washington, DC. Comments may be inspected at Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** J. Robert Ball, Regulations and Policy Office (ACE-101), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

These amendments are based upon a Notice of Proposed Rulemaking, Notice No. 83-17, published in the **Federal Register** on November 15, 1983 (48 FR 52010). All comments received in response to Notice No. 83-17 were considered in adopting these amendments.

### Background

Since 1953, the airworthiness standards have distinguished small from large airplanes by a 12,500 pound maximum certificated takeoff weight (MCTW) limitation regardless of the type of operation. When this weight limitation was established, little concern was expressed that this demarcation would eventually become questionable with regard to airworthiness standards for an airplane of the commuter category. At that time, there were few airplane designs near this 12,500 pound limitation; i.e., they were either considerably above or below that weight.

In 1966, the FAA established an air taxi airworthiness program with the objective to provide a transition for air taxi airplanes from the small airplane requirements of Part 23 to the transport category airplane requirements of Part 25. That program resulted in the issuance of Special Federal Aviation Regulation No. 23 (34 FR 189; January 7, 1969). An additional step in the upgrading of airworthiness standards for reciprocating-engine and turbopropeller-powered small airplanes used in Part 135 operations was the adoption of an Appendix A to Part 135 (35 FR 10098; June 19, 1970) which set forth additional airworthiness standards for airplanes with ten or more passenger seats.

On July 7, 1970, the FAA issued Notice No. 70-25 (35 FR 10911) proposing to upgrade the level of airworthiness of small airplanes intended for operations under Part 135. In response to the comments received to Notice No. 70-25, and after further consideration, the FAA determined to limit the future applicability of Part 23 to small normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of nine or less. At that time this action was considered more appropriate than adding additional airworthiness requirements to Part 23. This action was based upon a trend toward an increase in the number and types of airplanes designed to carry relatively large numbers of passengers. At that time, the FAA considered that continued applicability of Part 23 to small airplanes designed to carry ten or more passengers was no longer in the interest of safety and future generations of these small airplanes should adhere to the level of safety afforded by the requirements of Part 25, irrespective of whether operations were conducted under Part 135 or Part 91. Thus, Amendment 23-10 limiting the number of seats, excluding pilot seats, to nine or less became effective March 13, 1971, and is applicable to normal, utility, and acrobatic category airplanes for which an application for a type certificate is received by the FAA after the March 13, 1971, date.

On August 29, 1977, the FAA issued Notice No. 77-17, (42 FR 43490) Part 135 Regulatory Review Program, proposing, in part, to prohibit the operation, after certain dates, of reciprocating engine or turbopropeller-powered small airplanes not certificated in the transport category and having a passenger seating configuration of ten or more seats. Before the closing date for comments on November 28, 1977, the FAA withdrew this part of the proposal in Notice No. 77-17. The more significant reasons given for the withdrawal are: (1) Comments on this proposal showed its

effect would virtually destroy the commuter airline industry and deprive the general public of needed transportation; (2) the proposal had already disastrously effected the industry; (3) airplane sales had been cancelled and operators had serious difficulty with financing: and (4) the cost of complying with the proposal would exceed 300 million dollars for an industry whose total profits did not exceed 50 million dollars a year.

Consequently, the FAA determined that the proposal should not be retained as part of the proposed new Part 135. The FAA did note that the withdrawal of the proposal did not preclude the FAA from issuing similar proposals in the future due to a change in circumstances nor commit the FAA to any course of action. The FAA encouraged further commits on this issue.

The FAA/Industry Commuter Aircraft Weight Committee submitted a petition to amend the regulations to allow certain small airplanes to be type certificate at maximum certificated takeoff weights greater than the 12,500 pound limitation without complying with the transport category airworthiness requirements of Part 25. Responding to this petition and other needs for improved standards resulting from the Airline Deregulation Act, the FAA initiated a three-phase program for certification and operation of commuter airplanes. The first phase was the issuance of a revised Part 135—Air Taxi Operators and Commercial Operators (43 FR 46742; October 10, 1978), which aligned the rules for those operations more closely with those of Part 121—Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft. The second phase, initiated by Notice No. 78–14 (43 FR 46734; October 10, 1978), proposed temporary rules stating the additional airworthiness requirements necessary to provide for increased takeoff gross weight and passenger seating capacity of certain existing small, propeller-driven, multiengine airplanes. The outcome of this Notice was the adoption of SFAR No. 41 (44 FR 53723; September 17, 1979), which became effective October 17, 1979. The third phase established the Light Transport Airworthiness Review, Notice No. 78–17 (43 FR 60846; December 28, 1978) to develop a separate set of airworthiness standards for multiengine airplanes with a maximum gross weight up to 35,000 pounds and a seating capacity up to 30 passengers. Subsequent considerations and recommendations from industry during the Review escalated the maximum weight and passenger capacity limits to 50,000 pounds and 60 passengers for the light transport category airplane. Nevertheless, the FAA terminated the Light Transport Airworthiness Review program because, based on available information, the expected economic benefits resulting from a new light transport airplane airworthiness regulations would not be realized.

After the expiration of SFAR No. 41, as amended, on October 17, 1981, and termination of the Light Transport Airplane Airworthiness Review, the FAA reinstated SFAR No. 41, with amendments, as SFAR No. 41C, effective September 13, 1982 (47 FR 35150; August 12, 1982), for 1 year and subsequently started development of the commuter category requirements. Accordingly, Notice No. 83–17 (48 FR 52010; November 15, 1983) contained the proposed commuter category requirements.

This rulemaking package was initiated prior to the issuance on October 9, 1986, of NTSB Safety Recommendations A–86–98 through A–86–118, which deal with commuter airplane operating requirements. The FAA has not yet completed its review of those recommendations or developed its position on them. This rulemaking has no relationship with those recommendations and they have not been addressed in this document. If, after further review, the FAA finds it necessary to undertake additional rulemaking, we will do so.

**Discussion of Comments**

*General*

Interested persons were invited to participate in the development of this final rule by submitting such written data, views, or arguments as they may desire to the regulatory docket on or before February 14, 1984. In response to Notice No. 83–17, the FAA received 29 sets of comments.

In general, the comments received address five major issues: (1) Past FAA actions relative to airworthiness standards for airplanes of a size similar to those proposed in Notice No. 83–17; (2) the level of safety provided by the commuter category airplane airworthiness standards; (3) required compliance with the minimum standards of the International Civil Aviation Organization (ICAO); (4) different levels of safety for similar 19-passenger airplanes with maximum certificated takeoff weights below 12,500 pounds and above 12,500 pounds; and (5) comments which address specific proposals, or the lack of proposals, given by section number of Part 23.

Two commenters cite past FAA actions as being inconsistent with the proposal of airworthiness standards in Part 23 for type certification of an airplane in the proposed commuter category. One of these commenters oppose the proposal and cites the adoption of Amendment 23–10, effective March 13, 1971, which restricted future Part 23 airplanes to nine seats or less, excluding pilot seats. This commenter notes that, at that time, the FAA considered future airplanes capable of carrying more than nine passengers should be type certificated to Part 25. The other commenter quotes various statements from the notices of the Light Transport Airworthiness Review program and the purpose stated for the proposed Part 24—Airworthiness Standards: Light Transport Airplanes, and questions the FAA action in issuing Notice No. 83–17.

In response to the comment addressing the adoption of Amendment 23–10, the various rulemaking activities subsequent to the adoption of that amendment evidence significant changes in circumstances. Lack of adequate standards resulted in an unworkable situation by requiring all future airplanes capable of carrying more than nine passengers to be type certificated to Part 25. The problems created by that requirement are evidenced by the Light Transport Airworthiness Review Program in which Part 24 was proposed and by the adoption of SFAR No. 41 and its subsequent amendments as interim measures. Amendment 23–10 does, however, continue to be applicable to type certification of normal, utility, and acrobatic category airplanes.

The Light Transport Airworthiness Review Program recognized that application of Part 25 airworthiness standards to a light transport airplane was inappropriate. As noted in Notice No. 78–17 (43 FR 60846, December 28, 1978), which initiated the Review, the FAA proposal for a Part 24 tried to establish a balance between the transport category requirements in Part 25 and the small airplane requirements in Part 23 which would maintain the level of safety believed appropriate for light transport airplanes carrying passengers for hire. The airworthiness standards of Part 24 were initially proposed for an airplane with a maximum seating capacity of about 30 passengers and a maximum weight of 35,000 pounds without regard to the type of powerplants. Upon termination of the Review, the parameters defining the

light transport airplane extended to airplanes capable of carrying a maximum of 60 passengers and having a maximum weight of 50,000 pounds.

Based on the cited rulemaking efforts, the FAA does not consider the adoption of the new commuter category and the airworthiness standards for this category of airplane in Part 23 to be inconsistent with past actions by the FAA.

Information available to the FAA resulted in a determination, and industry has concurred, that a need exists for permanent airworthiness standards for an airplane of the size stated in Notice No. 83–17 and that an additional category of airplane should be established within Part 23. The FAA's alternatives were to relax the requirements of Part 25 to accommodate the new category or to propose additional airworthiness standards in Part 23 for the new category. The most appropriate course for the FAA was to propose the integration of additional standards into Part 23. The FAA considers the current airworthiness standards applicable to new type certification applications for normal, utility, and acrobatic category airplanes of Part 23, and the additional airworthiness standards of SFAR No. 41, as supplemented by those airworthiness standards necessary to comply with the minimum requirements developed by the International Civil Aviation Organization (ICAO) in Annex 8, Part III. The ICAO standards apply to airplanes weighing 5,700 kg. (12,566 lbs.) or more and to the carriage of passengers in international air navigation. The airworthiness standards of Appendix A of Part 135 not previously adopted in Part 23, which apply to airplanes with ten or more passenger seats, were also proposed for type certification of commuter category airplanes. The satisfactory service experience of propeller-driven, multiengine normal category airplanes recertificated to the additional requirements of SFAR No. 41 was drawn upon to support this course of action.

Several comments were received addressing the level of safety of the proposed commuter category airplane. As stated in the Notice, the level of safety established by the proposed airworthiness standards for the new commuter category are considered, to the maximum feasible extent, equivalent to those provided by the airworthiness standards for larger airplanes used in air transportation. In this determination, the FAA considered the following: (1) The airworthiness standards of Part 23, including all current amendments, would apply as a type certification basis for the commuter category; (2) the commuter category is limited to propeller-driven, multiengine airplanes and a maximum seating, excluding pilot seats, of 19 passengers; (3) the airworthiness standards for all commuter category airplanes up to and including the maximum certificated takeoff weight of 19,000 pounds must comply with those standards established by ICAO for airplanes weighing 5,700 kg or more, (4) the compartment interior requirements are equivalent to those set forth in Part 25 at the time Notice No. 83–17 was issued, irrespective of maximum weight of the commuter category airplanes; and (5) engine fire detector and fire extinguishing systems are required for type certification of any commuter category airplane. The FAA will continue to review the airworthiness standards for commuter category airplanes and propose improvements and updates, when necessary, to maintain the level of safety intended for airplanes to be used by commuter airlines and when shown to be in the public interest.

The FAA received numerous comments supporting the proposal. However, eight of the commenters use the phrase "special commuter category." The Federal Aviation Regulations and predecessor regulations have for many years addressed airworthiness standards for four categories of airplanes; i.e., normal, utility, acrobatic, and transport. This discussion does not include the restricted and limited categories which have specific applicability. The FAA assumes that the commenters are misinterpreting the word "special" if they are using it as a carryover from the temporary Special Federal Aviation Regulation No. 41 which contained the additional airworthiness standards for recertification of certain small airplanes with increases in maximum weight or passenger seats or both. The commuter category is not "special." It is a new category of airplane being established by this rulemaking.

Two commenters oppose mandatory compliance with the ICAO Annex 8, Part III requirements on the basis that, to date, the performance requirements have been applied to SFAR No. 41 certificated airplanes only when it was necessary to meet the international requirements of ICAO Annex 8. They assert that compliance with the ICAO requirements should be optional. One commenter contends that the ICAO rules generally represent the essential elements of Part 25 performance requirements and the inclusion of overly stringent and economically burdensome requirements are not essential to ensure the safety of modern airplanes to which the new commuter category airworthiness standards will apply. Furthermore, one commenter requests that the proposal be revised to restore the current SFAR No. 41 performance requirements; i.e., to permit Part 135 Appendix A performance for commuter category airplanes. In support of the commenter's position, the commenter submits plots showing the number of airports in the United States that could not be served due to the performance limitations of two currently certificated SFAR No. 41 airplanes.

On the other hand, several commenters, including an airline association, a foreign airplane manufacturer, and foreign civil airworthiness authorities support the proposal that the commuter category airplane comply with the ICAO Annex 8, Part III, requirements. One commenter contends that the performance of commuter airplanes has, in past years, been marginal in cases of engine failure and that the proposal to add ICAO Annex 8, Part III to commuter standards, bringing the commuter airplanes into conformity with international standards, will provide an additional protection and, therefore, endorses the proposal.

Two commenters contend that the provisions of section 1(a) of SFAR No. 41 should be incorporated into the proposed commuter category requirements in Part 23. This would allow type certification of airplanes in the commuter category with ten or more passenger seats (up to 19 seats) and a maximum weight of 12,500 pounds or less by compliance with regulations incorporated in the type certificate and only the additional requirements in Appendix A, of Part 135. This would also result in a dichotomy of the airworthiness standards for commuter category airplanes weighing up to 12,500 pounds and those weighing above 12,500 pounds.

The main argument presented by these commenters is that omission of section 1(a) of SFAR No. 41 from the proposed commuter category rule is inconsistent with the International Civil Aviation Organization (ICAO) standards of Annex 8. The ICAO standards differentiate the airworthiness requirements for airplanes weighing up to 12,500 pounds and those weighing more. Airplanes weighing more than 12,500 pounds must comply with Annex 8, Part III, while those weighing less than 12,500 pounds may comply with lesser requirements.

The FAA does not agree that the current requirements in SFAR No. 41 provide adequate or appropriate requirements for type certification of newly designed airplanes in the new commuter category. The Federal Aviation Act of 1958, as amended, addresses the level of safety in air transportation provided by air carriers in at least two specific sections. First, section 601(b) states, in part, ". . . the Secretary of Transportation shall give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to any differences between air transportation and other air commerce." Second, section 419(c) states, in part, ". . . the Administrator, by regulation, shall establish safety standards (A) for aircraft being used by commuter air carriers . . . Such safety standards . . . shall impose requirements upon such commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling on air carriers which provide service pursuant to certificates issued under section 401 of this title."

The ICAO airworthiness standards proposed for the commuter category airplane are the minimum standards to ensure safety of airplanes over-flying another contracting state. Contracting states, such as the United States, may establish standards which provide a higher level of safety than the ICAO minimum standards. The passenger capacity and proposed commercial service use are more meaningful parameters to delineate airworthiness safety standards than is airplane weight. Associating airworthiness standards with the number of passengers carried is also consistent with the nine passenger seat limitation requirement currently applicable to normal, utility, and acrobatic category airplanes. The proposed airworthiness standards are the minimum required in the interest of safety and form an integral part of the level of safety achieved by air carriers. Therefore, no changes in the proposal are made.

Several commenters contend that the production limitation date of October 17, 1991, for SFAR No. 41 airplanes should be eliminated and production of currently certificated SFAR No. 41 airplanes should be permitted for an indefinite period of time.

In response to these comments, we note that SFAR No. 41 was promulgated to meet an immediate need for the emerging commuter airline industry. That SFAR was predicated on the application of additional airworthiness standards for existing type certificated normal category airplanes that had demonstrated a good safety record. At the time SFAR No. 41 and its subsequent amendments were adopted, they provided airworthiness standards which met the mandate of the Congress regarding the safety standards for airplanes used by commuter air carriers. The temporary airworthiness standards of SFAR No. 41 served the purpose for which they were intended and established the necessary level of safety mandated by Congress. In any case, newly manufactured airplanes which are certificated under SFAR No. 41 will not be required to comply with these requirements.

One commenter states that Part 23, as amended by this final rule should provide for airplanes with ten or more passenger seats and a maximum certificated takeoff weight of 12,500 pounds or less, citing paragraph 1(a) of SFAR No. 41 as the reason for such a provision. Additionally, several commenters contend that certification of airplanes in the commuter category should be permitted by complying only with the additional requirements applicable to the commuter category and those requirements stated in the previous type certification basis of their airplane.

The FAA does not agree that the commuter category should differentiate between airplanes that weigh less than 12,500 pounds and those that weigh more than 12,500 pounds. Furthermore, the FAA has concluded that a certification basis for the new commuter category should include all current amendments of Part 23 plus all of the airworthiness standards of SFAR No. 41 in order to achieve the appropriate level of safety. The proposed requirements for fuel tanks, fire extinguishing systems, fire extinguishing agents, compartment interiors, fuel system components crashworthiness, and landing gears are essential to the level of safety expected of airplanes to be type certificated in the new commuter category, irrespective of the weight of the airplane. Certification of airplanes to only the SFAR No. 41, paragraph 1(a) requirements would permit certification of airplanes with a seating configuration, excluding pilot seats, of 19 or less without complying with the above requirements.

The traveling public is entitled to the protection afforded by these safety requirements regardless of whether the commuter category airplanes has a maximum certificated takeoff weight above or below 12,500 pounds. In addition, the FAA has had several airworthiness review programs of the airworthiness standards for Part 23 airplanes. The purpose of these airworthiness reviews has been to improve and update the airworthiness and crashworthiness standards applicable to the type certification of new small airplane designs and many of the airworthiness standards required by paragraph 1(a) of SFAR No. 41 have subsequently been adopted into Part 23 for new designs of airplanes in the normal, utility, and acrobatic categories. These requirements alone are not considered adequate for commuter category airplanes and must be supplemented as set forth in Notice No. 83–17 for commuter category type certification.

The FAA received comments in support of the proposal which contend that the proposal is equivalent to the airworthiness standards of the proposed Part 24 for the light transport airplane. The FAA does not agree that the airworthiness standards for the commuter category airplane are equivalent to those of the recently proposed Part 24. Some of the reasons for this disagreement are the unrestricted use of powerplants, the size, and maximum weight of the proposed Part 24 airplane and airworthiness standards directly related to airplanes of this size.

Six additional commenters in support of the proposal, operations of SFAR–41 airplanes, stated that redesign of the 19-seat commuter airplane to meet the requirements of Part 25 would be cost prohibitive. The information supplied by these commenters is consistent with that provided by commenter to a proposal in Notice No. 77–17 which would have required all airplanes operated under Part 135 after June 30, 1984 to meet Part 25 requirements. That proposal in Notice No. 77–17, comments received on it, and FAA reason for withdrawal of the proposal, is discussed earlier in the Regulatory History portion of this final rule. Based on the comments which resulted in the withdrawal of Notice No. 77–17 and these six comments, the FAA does not plan to propose that existing 19-seat commuter airplanes be redesigned to meet the requirements of Part 25.

One commenter suggests changes to Part 1 to redefine "small aircraft." No justification or reason to support a redefinition of "small aircraft" is offered. The suggested redefinition, therefore, is unnecessary.

*Discussion of Comments to Specific Sections of Parts 21, 23, 36, 91, and 135*

The following comments and discussions are keyed to like-numbered proposals contained in the Notice, or to specific sections where the comments address sections not previously addressed in Notice No. 83–17. In Notice No. 83–17, proposals numbered 1 through 59 address Part 23; proposals 60 through 72 address Part 21, proposals 73 through 78 address Part 36, proposal 79 addresses Part 91, and proposals 80, 81, and 82 address Part 135.

Proposal 1—No comments were received in response to the proposed title change to Part 23. The title of Part 23 is adopted as proposed.

Proposal 2—No specific comments were received in response to the proposed amendment of § 23.1, however, general comments related to § 23.1 have been discussed under the previous general comments of this preamble. Section 23.1 is adopted as proposed.

Proposal 3—One commenter contends § 23.3(d) should be revised to provide for airplanes limited to 12,500 pounds maximum takeoff weight and a seating configuration, excluding pilot seats, of ten or more. The FAA does not agree. The airworthiness standards, adopted herein establish requirements for the commuter category, regardless of weight, from less than 12,500 pounds up to and including 19,000 pounds, or passenger seating configuration, excluding pilot seats, not to exceed 19.

One commenter recommends that § 23.3 be amended to require all airplanes used by scheduled air carriers to be certificated as commuter category since, under the present and proposed rules, airplanes of nine or fewer passenger seats will continue to be eligible for certification under existing Part 23 rules and not the enhanced commuter category rules. The FAA recognizes the merit of the comment and will consider additional rulemaking to enhance the level of safety of airplanes used by scheduled air carriers with a passenger configuration of nine or less when shown to be in the public interest or necessary for safety. The FAA considers this comment to be outside the scope of this rulemaking activity and one that cannot be adopted concurrently with these amendments without additional public participation in such a proposal.

Another commenter recommends that § 23.3(d) be changed to add single-engine, turbopropeller-powered airplanes to the commuter category. The FAA does not agree with the inclusion of single-engine, turbopropeller-powered airplanes within the commuter category. While the commenter contends that turbopropeller engines have a record of increased reliability over reciprocating engines, the prospect of a single-engine failure does not provide the level of safety expected from the airworthiness standards for commuter category airplanes which must have the ability for continued safe flight and landing after probable failures, including the failure of an engine.

One commenter questions the rationale and justification which restrict the commuter category to propeller-driven airplanes. The commenter contends that this restriction does not appear to enhance the airworthiness of the commuter category and could unduly restrict innovative designs. The scope of the proposal was limited to integrating into Part 23 the airworthiness standards as set forth in Notice No. 83–17, including those necessary to comply with the ICAO requirements. Since the airworthiness standards proposed in Notice No. 83–17 would apply to propeller-driven airplanes only, these standards are not considered adequate for other propulsion system designs. The comment is not germane to the scope of this final rule.

A minor clarifying change was made to proposed § 23.3(e) by inserting the word "type" before the word "certificated." This makes clear that certification in that paragraph was with reference to type certification and not to airworthiness certification.

It has been past FAA policy to issue an airworthiness certificate for an airplane in more than one category. However, for an airplane type certificated in both the normal and commuter categories, the FAA will not issue an airworthiness certificate for more than one category. This procedure is being established because of significant differences among the airworthiness, maintenance, and operating requirements applicable to normal and commuter category airplanes. Accordingly, for those airplanes that may be type certificated in both the normal category and the commuter category, an applicant may apply for a standard airworthiness certificate as either a normal or commuter category airplane, but not for multiple airworthiness certification in both categories. If the applicant selects airworthiness certification as a normal category airplane, the airplane must be operated as a small airplane with a seating configuration, excluding pilot seats, of nine or less in accordance with the normal category type certificate limitations for the airplane. Alternatively, if the applicant selects airworthiness certification as a commuter category airplane, the airplane must be operated in accordance with the commuter category type certificate limitations for the airplane.

Proposal 4—One commenter states that paragraph 4(a) of SFAR No. 41, as amended, requires the establishment of a maximum zero fuel weight and contends that § 23.25 should include such a requirement. The FAA agrees. Therefore, establishment of a maximum zero fuel weight by the applicant, as required in paragraph 4(a) of SFAR No. 41, is considered necessary and § 23.25 is revised accordingly to assure the airplane design considers the necessary operational limitations with variations between payload and fuel loads.

Proposal 5—One commenter states, for ICAO Annex 8 compliance, that an approach configuration must be selected. The FAA agrees that the applicant should determine the approach configuration since compliance with the airworthiness standards for commuter category airplanes requires performance in the approach configuration. Accordingly, § 23.45(f)(1) is changed by adding the word "approach" following the words "en route" in the requirements for airplane configuration selection by the applicant.

Another commenter recommends a statement of principle as a new paragraph (a) to be added to § 23.45 to read as follows, and subsequent paragraphs renumbered accordingly:

"(a) The intended level of safety will be achieved only if the performance information, established and furnished in accordance with FAR 23, Subparts B and G, is used in conjunction with the performance operating rules of FAR 135.399 through FAR 135.403."

The commenter proposes revisions to § 135.399 and additional sections to Part 135. The FAA does not agree that a "statement of principle" should be included in § 23.45. The Federal Aviation Act of 1958, as amended, sets forth the requisite policy and principle with respect to airworthiness standards and operating rules for U.S. civil aircraft.

The previous commenter also recommends that § 23.45(f)(3) include reference to the "takeoff flight path" unless it is covered by" ". . . the critical-engine-inoperative takeoff performance," and the landing distance. The FAA agrees with the recommendation and, for clarity, this general performance requirement has been revised to include "takeoff flight path" and "landing distance" in § 23.45(f)(3). Since § 23.1583, Operating limitations, requires this information to

be included in the Airplane Flight Manual (AFM) for safe operation and since § 23.75 includes requirements for determining landing distances, § 23.45(f)(3) should include requirements that make it clear that the applicant must establish these procedures.

In addition, the commenter recommends that § 23.45(f)(4) be revised to include the establishment of procedures for conducting a missed approach and the requirement for these procedures be stated in the Airplane Flight Manual in accordance with the requirements of §§ 23.1585 and 23.1587. The FAA agrees with the recommendation. Since new §§ 23.67(e)(3) and 23.77(c) contain requirements for the establishment of condition for the execution of a missed approach and balked landing and § 23.45(f)(4) as proposed in Notice No. 83–17 requires the establishment of procedures for the execution of balked landings, the procedures for executing a missed approach should also be included in this amendment of § 23.45(f)(4). These procedures are required to be in the Airplane Flight Manual by § 23.1585(a). The FAA considers this addition as an elaborative, nonsubstantive change to § 23.45(f)(4).

One commenter contends that §§ 23.45 through 23.77 should reflect the standards contained in §§ 25.101 through 25.125 for the following reasons: (1) The proposed wording of § 23.55, Accelerate-stop distance, does not incorporate $V_{EF}$ or the time delays for engine failure recognition and reaction by the pilot as required by Part 25, and (2) proposed § 23.57, Takeoff path, would require a 2.0 percent steady state climb gradient. This is an improvement over existing regulations, but the commenter is of the opinion that 2.4 percent should be required, contending this gradient is very important to the level of safety attained. The commenter contends that the level of safety is not the result of tailoring each takeoff for the most critical condition, but of establishing a floor such as the 2.4 percent gradient. A floor gradient covers those anomalies not accounted for by the takeoff equation; e.g., actual runway gradient rather than average, runway outside air temperature, windshear, drag from brakes and other contaminants, engine power degradation, instrument errors, and weight and balance errors. In addition, this commenter states that if the takeoff is predicated upon clearing obstacles by some fixed value; e.g., 35 feet, the end result will be disastrous because these anomalies may contribute to a failure to clear the obstacle.

The FAA does not agree with the comment that §§ 23.45 through 23.77 should be replaced with the requirements of §§ 25.101 through 25.125. The requirements of §§ 23.45 through 23.77 which require a 2-percent second-segment climb gradient are the standards for airplanes recertificated to SFAR No. 41 as supplemented by those requirments necessary to comply with the flight performance standards of ICAO Annex 8, Part III. Those recertificated airplanes have a good safety record and retaining those requirements as well as adopting the enhanced flight performance requirements of ICAO Annex 8, Part III, provide the safety level expected of the new airplane designs permitted by this new category. Furthermore, this final rule includes many of the Part 25 requirements suggested by this commenter.

Another commenter states that the proposed flight requirements for this category of airplane attain the appropriate level of safety of commuter category airplanes. The commenter states that the additional requirements of SFAR No. 41C, which brought airplanes over 12,500 pounds into compliance with ICAO Annex 8, Part III, now appear to be applicable to any 10- to 19-seat airplane, even if under 12,500 pounds. The commenter supports this action.

In response to this comment, to clarify what appears to be a misconception on the part of the commenter, the additional requirements of SFAR No. 41C did not require airplanes of over 12,500 pounds to comply with the requirements of ICAO Annex 8, Part III. The ICAO Annex 8 requirements are applicable only if an applicant desires to comply with them for certification to SFAR 41C; i.e., compliance is not mandatory as implied by the commenter. The commenter correctly understands that the ICAO Annex 8 requirements are applicable to any commuter category airplane, even if under 12,500 pounds. Accordingly, ICAO Annex 8 requirements, as adopted by this amendment, are applicable to any commuter category airplane, even if the seating configuration, excluding pilot seats, is less than ten or the airplane has a maximum weight of less than 12,500 pounds and is to be type certificated in the commuter category.

Proposal 6.—The comments received in response to the proposed amendment of § 23.51, were discussed under Proposal 5. Accordingly, § 23.51 is adopted as proposed.

Proposal 7.—One commenter agrees with the FAA decision to apply essentially Part 25 standards to takeoff performance criteria for commuter category airplanes. This commenter suggests that a significant simplification of § 23.53, Takeoff speeds, could be achieved if it were based more closely on the existing requirements of § 25.107 and the Joint Airworthiness Requirements (JAR) 25.107. A proposed simplification was offered. (NOTE: The Civil Airworthiness Authorities of certain European countries have agreed common to comprehensive and detailed airworthiness requirements referred to as the Joint Airworthiness Requirements (JAR) with a view to minimizing type certification problems on joint ventures, and also to facilitate the export and import of aviation products.) The FAA agrees and § 25.53(c) has been simplified by deletion of subparagraphs (c)(4)(ii) and (iii) which are included in subparagraph (c)(1) of this section.

Another commenter notes the absence of a requirement for the determination of the minimum unstick speed. $V_{MU}$, and the resultant absence of $V_{MU}$ consideration in the determination of the rotation speed, $V_R$. A determination of $V_{MU}$ was not a requirement for a type certification under SFAR No. 41 and the FAA considers the requirement that $V_R$ not be less than 1.10 $V_{S1}$ or 1.10 $V_{MC}$ as an adequate safeguard. In addition, another commenter supports this FAA position and notes that the $V_R$ requirement is more stringent than that required for transport category airplanes. In addition, the determination of $V_{MU}$ typically requires addition of equipment to the airplane to conduct the tests and the FAA considers the additional tests as unnecessary for commuter category type certification.

Proposal 8.—One commenter states that although the proposed requirements of § 23.55, Accelerate-stop distance, have been accurately adopted from Part 135, Appendix A, § 5(c), this section has always conflicted with the definition of $V_1$ as a decision speed. The commenter suggests that § 23.55(a)(2) be changed to read ". . . at which $V_1$ reached assuming that, in the case of engine failure, the pilot decides to stop at the speed $V_1$." Another commenter contends that the proposal needs to be modified since it is not entirely consistent with the relationship between $V_1$ and $V_{EF}$, as stated in § 23.53(c)(1)(iv). This commenter suggests that the language used in § 23.55(a) emulate the existing requirements of § 25.109(a) and JAR 25.109(a). The FAA agrees with the first commenter regarding the conflict with the definition of $V_1$ as a decision speed and also with $V_1$ and $V_{EF}$ as proposed in § 23.53(c)(1)(iv). These apparent

conflicts can be resolved by more clearly setting forth the series of events necessary to determine the accelerate-stop distance requirement. Section 23.55(a) is revised accordingly and the revision is a nonsubstantive change to the requirement as proposed.

One commenter suggests § 23.55(b)(3) be changed to read ". . . no more than average skill is required . . ." instead of ". . . exceptional skill is not required . . ." The commenter does not provide a reason for the suggestion. Section 25.109(b)(3) has the same wording as the proposal in § 23.55(b)(3) and the FAA is not aware of any interpretive problems with the Part 25 requirement. Accordingly, § 23.55(b)(3) is adopted as proposed in Notice No. 83–17.

Proposal 9.—Two commenters note that § 23.57 is patterned after the requirements of § 25.111, and that § 23.57(c)(2) includes the "second segment" climb requirement. They contend that this approach to stating the requirements may ultimately cause disputes; therefore, it is more appropriate to include the requirement in § 23.67, Climb: one engine inoperative. The FAA agrees and the words "at a steady gradient of not less than two percent, and" are deleted as proposed in § 23.57(c)(2) and the "first segment" and "second segment" climb requirements are added to § 23.67 as recommended by these commenters.

One commenter contends the takeoff path should terminate at 1000 feet above the takeoff surface as stated in Part 135, Appendix A, instead of 1500 feet as proposed in § 23.57(a) and the final rule should delete all en route climb gradient requirements other than a 1.2 percent standard. The FAA does not agree. First, airplanes recertificated to SFAR Nos. 41B and 41C which comply, at the election of the applicant, with the ICAO requirements, the ICAO 1500-foot takeoff path requirement applies instead of a 1000-foot takeoff flight path required in Part 135, Appendix A. Furthermore, commuter category airplanes are to comply with the ICAO requirements. Secondly, en route climb gradient requirements other than 1.2 percent were required by an SFAR 41 amendment which set forth the requirements for ICAO compliance. These requirements are necessary in the commuter category standards to comply with the ICAO airworthiness standards.

Another commenter contends the 2-percent climb gradient to 400 feet, as stated in Part 135, Appendix A, paragraph 6(b)(2), has been interpreted to be the same gradient required at airfield altitude. This commenter cites § 25.121(b) which was not referenced in SFAR No. 41B to satisfy compliance with ICAO requirements. The commenter states the same criteria currently contained in Part 135, Appendix A, should be retained for § 23.57(c)(2) and further contends that no reason is evident for changing that regulation. The FAA does not agree. The proposed climb gradient adopted in § 23.67 more clearly identifies the requirement for climb with one engine inoperative. The climb gradient is necessary to comply with the ICAO requirements and the level of safety expected on new airplane designs of the commuter category.

Another commenter contends that applications for type certification in the commuter category, for airplanes with more than two engines, are likely to be rare and some simplification of § 23.57 and other requirements might be achieved by the deletion of requirements relating to three- and four-engine airplanes. The FAA concludes, however, that in cases where an applicant is designing a three- or four-engine airplane, the applicant should know the applicable requirements for its design. Therefore, the requirements for three- and four-engine airplanes should remain in the final rule. Accordingly, the proposal regarding three- and four-engine airplanes is adopted as proposed.

One commenter understands that FAA policy, with respect to transport category airplanes, is to deny performance credit for manual propeller feathering before the airplane reaches a height of 400 feet above the takeoff surface and suggests that § 23.57(c)(4) be changed to include the commenter's understanding of this policy as a clarification of the use of propeller feathering in determining commuter category airplane performance. The commenter's understanding is correct. Furthermore, the FAA used Part 135, Appendix A, paragraph 6(b), Takeoff climb: one-engine-inoperative, as one of the reference sources for the § 23.57(c)(4) proposal. Paragraph 6(b) states, in part, ". . . the remaining engines at the maximum takeoff power or thrust, and the propeller of the inoperative engine windmilling with the propeller controls in the normal position, except that if an approved automatic feathering system is installed, the propellers may be in the feathered position: . . ." To clarify the condition for which use of propeller feathering can be regarded as a configuration change, the word "automatic" will precede the word "propeller" in the final revision of § 23.57(c)(4). This action is not based upon the policy applied to transport category airplanes, but rather upon the requirement stated in the additional airworthiness standards of Part 135, Appendix A, which was to be integrated into Part 23 for commuter category airplanes as indicated in Notice No. 83–17.

Proposal 10.—One commenter states that this new § 23.59 should be applicable for ICAO Annex 8 compliance and should apply only when the applicant elects such compliance. The FAA disagrees. The issue of ICAO Annex 8 compliance has been discussed previously as it concerns the level of safety expected of new airplane designs for the commuter category.

Another commenter supports the proposal but, nonetheless, suggests a change based upon material contained in Advisory Circular, Joint (ACJ) No. 25.113(a)(2) for takeoff with all engines operating. (Note: AJC advisory material is developed in conjunction with the JAR airworthiness standards.) The commenter contends the requirements of takeoff and accelerate-stop performance data are incomplete unless they include sufficient information to allow the rational downward adjustment of $V_1$ when taking off from a wet runway. The FAA does not agree. The requirements, as stated, are essentially equal to those applied to transport category airplanes as cited in § 25.113(a). The FAA is not aware of any significant problems in applying the requirements of that section nor of any unsafe conditions arising from application of its requirements either to transport category airplanes or to the SFAR No. 41 airplanes which comply with the ICAO requirements.

One commenter, while stating that § 23.59(b) is a desirable addition, contends a new speed, $V_{LOF}$, is introduced. In addition, the commenter suggests that $V_R$ should be substituted for $V_{LOF}$ since this would result in a more conservative, shorter takeoff run. The FAA does not agree that a new speed, $V_{LOF}$, has been introduced. Section 23.51(b) currently states "For multiengine airplanes, the lift-off speed, $V_{LOF}$, may not be less than $V_{MC}$ determined in accordance with § 23.149." In addition, the FAA does not agree that $V_R$ should be substituted for $V_{LOF}$ because $V_R$ is the rotation speed for takeoff and $V_{LOF}$ is the speed at which the airplane leaves the takeoff surface after attaining the rotation speed, $V_R$.

Another commenter contends that few airport authorities declare clearways and that few operators have the resources to carry out independent surveys. Operators should be permitted to use defined clearways when available and permitted by the operating rules. Takeoff distance limitations would result in a unwarranted penalty

at airports where clearways have been defined by the responsible authorities. Accordingly, the FAA is adopting the requirements as proposed.

Proposal 11.—One commenter states that the new § 23.61, only applies to ICAO Annex 8 compliance and should apply only when the applicant elects such compliance. The FAA disagrees. The issue of complying with the requirements of ICAO Annex 8 has been previously discussed.

Another commenter recommends deleting the requirements applicable to three- and four-engine airplanes. The FAA disagrees. See the discussion in Proposal 9.

Proposal 12.—One commenter contends that the proposed change to § 23.65 concerns all-engine climb and, except for balked landing climb, Part 135, Appendix A, is not concerned with all engine climb. Accordingly, the commentor recommends the deletion of proposed paragraph (d) to § 23.65. This commenter contends that the source referenced for the proposal is in error. Another commenter contends that the proposed additional paragraph (d) is superfluous because: (1) A requirement to furnish performance data in the Airplane Flight Manual is contained in § 23.1587, Performance information; (2) proposed new paragraph (a) to § 23.45, General, requires all performance requirements to be met at ambient atmospheric conditions; and (3) the existing § 23.21(a) requires all flight requirements to be met "at each appropriate combination of weight and center of gravity . . . for which certification is requested." The FAA has reexamined the proposal, considered the comments made, and does not agree with the commenters' contentions. The requirement states that the performance data must be determined. The information required by § 23.1587 cannot be furnished until it is determined as required by § 23.65(d).

Proposal 13.—One commenter states that proposed § 23.67(e) requires unwarranted reliance on the takeoff path requirements of proposed § 23.57 for one-engine-inoperative climb requirements. This commenter contends that the proposed regulation can be interpreted as meaning either that the takeoff with the landing gear extended requirement of Part 135, Appendix A, paragraph 6(b)(1) has either disappeared or may be demonstrated in ground effect and that neither case is considered satisfactory. This commenter recommends § 23.67(e) should be rewritten in a manner that follows the pattern of Part 135, Appendix A, paragraph 6(b) in order to be more easily understood.

Additionally, another commenter states that the proposed § 23.67(e)(2) seems to be redundant with proposed § 23.57(c)(3)(i) for two-engine airplanes and less restrictive than proposed § 23.57(c)(3)(iii) for three- and four-engine airplanes; therefore, proposed § 23.67(e)(2) might be deleted.

One further commenter states that no reason has been offered for failing to include the takeoff climb, landing gear extended, requirement of Part 135, Appendix A, in this rule and contends that § 25.121(a) and JAR 25.121(a) have always had such a requirement. This commenter asserts that § 23.57(c)(1) is not an adequate substitute because the takeoff climb with the landing gear extended should form a part of the takeoff weight, altitude, temperature (WAT) limitation and the "second segment" climb should also be included in § 23.67 instead of § 23.57. This commenter also states that, as discussed in the comment to § 23.57, the "second segment" takeoff climb with the landing gear retracted should also be located in § 23.67 since this, too, forms a part of the takeoff WAT limitation. In addition, this commenter states that by referencing § 25.1533(a)(1), it is clear by analogy with § 25.121(c), that proposed § 23.67(e)(2) forms the third component of the takeoff WAT limitation. This commenter submitted a rewrite of § 23.67(e) for consideration.

The FAA thoroughly considered the comments received along with the requirements of proposed § 23.67(e). The FAA agrees that the requirements should be rewritten to be more easily understood. The removal of the requirements for one-engine-inoperative climb in the takeoff from proposed § 23.57 and the insertion of that requirement in § 23.67 will meet this objective.

One commenter contends that a need exists for a further requirement similar to § 25.1533(a)(1) and JAR 25.1533(a)(1), which calls for a performance operating limitation to be established; i.e., the maximum takeoff weight as a function of altitude and temperature, at which compliance can be shown with the minimal climb gradient of proposed § 23.67(e). The FAA considers that the further requirement is encompassed adequately within the proposed requirements of § 23.1583(c)(3)(iii). This commenter contends that accepting a lower standard for the "second segment" climb is difficult to defend and also asks why there is no increase in values for three- and four-engine airplanes. The FAA considers the "second segment," 2-percent climb gradient for two-engine airplanes as the minimum standard based upon the satisfactory service experience with two-engine airplanes recertificated to SFAR No. 41. The FAA, however, reviewed this comment and agrees that a minimum standard should be established for three- and four-engine airplanes. Accordingly, in order to clarify this section and make it consistant with other proposed sections in this rulemaking action, § 23.67(e)(1)(ii) must include appropriate climb gradients for three- and four-engine airplanes. Also, corrections have been made to §§ 23.67(e)(1)(i) and 23.67(e)(2) by including appropriate three- and four-engine provisions.

One commenter contends that a need exists for a knowledge of the airplane's net climb/descent gradient with one engine inoperative in order to establish compliance with the performance operating rules relating to en route flight proposed by the commenter. The commenter asserts that this need is not met by existing § 23.67 and a proposed wording for a new section is offered. The FAA does not agree. The proposed requirements meet the en route performance operating rules of Part 135. Accordingly, the proposed section from this commenter has not been adopted.

Comments which are subsequently discussed on Proposal 15 notes that the proposed requirements for approach landing climb were misplaced under § 23.77. As discussed under that proposal, the approach landing climb requirements proposed for § 23.77 have been relocated to § 23.67(e)(3).

Proposal 14.—One commenter contends that the requirements of § 23.75, even as amended by proposed new paragraph (g), are inadequate in that they fail to address landing with one engine inoperative. A in the case of evaluation of takeoff performance, a clearer presentation of the relevant requirements can be achieved if the speeds and distances are considered in separate sections. As suggested text for a new requirement of reference approach speeds is offered. This commenter proposes that the landing field length requirement proposed by that, inasmuch as it includes consideration of the all-engines-operating and the one-engine-inoperative cases, is more complex than that proposed in Notice No. 83–17. The commenter notes that higher ambient temperatures dictate greater landing distances and the effect is amplified if credit for reverse thrust is allowed in accordance with existing § 23.75(f). The FAA does not agree that the proposed requirements are inadequate or that there is a need to separate the landing speeds and determination of landing

distances into separate sections. The requirements, as proposed, are essentially the same as those applied to transport category airplanes for Part 25 type certification. The comment addressing ambient temperature as one parameter against which landing distances should be determined is well taken. However, § 23.1583, Operating limitations, as proposed, requires as a limitation, the maximum landing weight for each altitude, ambient temperature, and required landing runway length within the range selected by the applicant. Section 23.75 is designed for test purposes and the affect of ambient temperature on the landing distance is calculated in accordance with § 23.1583. Therefore, no change is being made to the proposed requirement.

One commenter contends that consideration of wind in § 23.75(g)(1) is superfluous and should be deleted because of wind consideration in § 23.75(g)(3). Wind condition analysis is set forth in § 23.75(g)(3), as proposed. The requirement that wind conditions must be considered is set forth in § 23.75(g)(1). These paragraphs perform different functions, therefore, the word "wind" in § 23.75(g)(1) is not considered superfluous. Section 23.75(g)(1) is adopted as proposed.

Proposal 15.—One commenter states that in order to maintain the Part 25 and JAR 25 format, the balked landing climb requirements, for all categories of airplane should be transferred to § 23.65, Climb: All engines operating. The FAA does not agree. This commenter contends that the balked landing climb gradient minimum for commuter category airplanes should not be greater than the 3.2 percent climb gradient required for transport category airplanes. No supporting information was given concerning the inappropriateness of the balked landing climb gradient and that portion of the proposal is, therefore, adopted as proposed.

The comment is made that the minimum speed of 1.10 $V_{S1}$ is considered grossly inadequate since it implies an unacceptable erosion of stall speed margin and/or a need for a significant acceleration if the flaps are retracted from the landing position early in the maneuver. The contention, however, is that a climb initiated at precisely the landing approach speed has the characteristic of being slightly conservative, since climb performance is likely to improve slightly should the speed fall below $V_{REF}$ (reference speed) in an operational maneuver. This commenter offers a rewrite of the proposal. The FAA does not agree that the 1.10 $V_{S1}$ speed is inadequate as the minimum for this balked landing climb speed. Similar requirements have been applied to airplanes certificated under SFAR No. 41, and these airplanes have safely operated under the current rules.

One commenter contends that the proposal has two problems: (1) The proposal addresses the approach climb and is misplaced under § 23.77 Balked landing, which has a very exact meaning; and (2) the requirement should apply only to ICAO Annex 8 compliance and should be deleted or made optional. The commenter states that the approach climb requirement applies with the landing gear retracted and flaps in the approach position and the proposal should be clear that the landing gear is in the retracted position. Another commenter notes this and also suggests that § 23.67 Climb: one engine inoperative, includes the requirement for approach landing climb instead of the section concerned with the balked landing requirements. The FAA agrees that the approach-landing climb more appropriately should be cited as one-engine-inoperative climb requirement and is being placed in § 23.67(e)(3) for those requirements. As indicated previously, the FAA does not agree that the approach landing climb requirement should be deleted or optional. Accordingly, the requirement for approach landing climb is placed in amended § 23.67 instead of § 23.77 in substantially the same form as proposed in Notice No. 83–17.

Another commenter states that proposed § 23.77(c)(2), although adopted substantially unchanged from § 23.121(d) and JAR 25, is an unsatisfactory requirement primarily due to the operationally unrealistic speed at which the climb gradient minimum may be met. The commenter proposes an existing ICAO Airworthiness Technical Manual standard which possibly avoids this and other purported shortcomings of § 25.121(d) and JAR 25.121(d). The contention is that the proposal has the merit of ensuring compatibility, down to decision heights of 200 feet, with the ICAO PANS/OPS 1:40 go-around obstacle profile and offers greater flexibility in terms of configuration changes. Therefore, the proposal is not necessarily any more stringent than § 25.121(d) or JAR 25.121(d). While the proposal of the commenter appears to have merit, it introduces several requirements which need further consideration. The requirements of § 23.77(c)(2) as proposed in Notice No. 83–17 have been applied in numerous type certification programs and no adverse experience with such application has been offered. Accordingly, the proposed requirements of § 23.77(c)(2) are adopted in § 23.67, Climb: one engine inoperative, as recommended by the commenters.

Two comments were received on the issue of minimum control speed on the ground, $V_{MCG}$. One commenter questions the lack of a requirement to determine $V_{MCG}$. Another commenter states that to provide an adequate constraint on the lowest value of $V_{EF}$ with which $V_1$ may be associated, the inclusion in § 23.149 of a definition of the minimum control speed on the ground is necessary. A text based upon § 25.149(e) was proposed by this commenter. The FAA recognizes the merit in the suggestion; however, based upon experience with recertification of airplanes to the requirements of SFAR No. 41, a requirement for determining the minimum control speed on the ground, $V_{MCG}$, is not necessary at this time.

One commenter contends an adequate definition of the reference landing approach speed with one engine inoperative depends on the definition of the minimum control speed during landing approach with one engine inoperative, $V_{MCL-1}$. The contention is the minimum control speed with one engine inoperative is needed to maintain adequate lateral and directional control in the event of a one-engine-inoperative approach being discontinued. A text based upon JAR 25.149(g) is offered by this commenter. The FAA does not agree because the requirements of § 23.67 which relate to approach landing climb must be met for type certification. The FAA is not aware of any adverse experience because of the lack of such a determination, nor was any data submitted to support the contention. Furthermore, such a requirement has not been required for recertification of airplanes to SFAR No. 41.

One commenter states that the required rates of roll of § 23.157, at takeoff and during the approach, which result from the application of the formula contained in paragraphs (a) and (c) are not disputed. With the increase from 12,500 pounds to 19,000 pounds for the maximum takeoff weight of commuter category, however, these formulas yield rates of roll some what lower than designers would wish to achieve or pilots perceive as adequate and are lower than what is considered acceptable in ACJ 25.147(c)(2) and ACJ 25.147(e) for transport category airplanes. This commuter contends that this problem can readily be resolved by a proposed language change to § 23.157 (a) and (c). The FAA does not agree that § 23.157 should be revised. The

requirements of § 23.157 are the minimum rates of roll and designers may increase the rates of roll for their airplanes if they choose. Therefore, § 23.157 is an adequate minimum standard for commuter category airplanes and no change is being made to the existing requirement.

Proposal 16—One commenter contends that the proposal appears to provide a lower standard for commuter category airplanes than is applied to normal category airplanes and that the current requirements of § 23.161(c)(2) appear adequate. Another commenter states that since most commuter category airplane operations would be conducted under instrument flight rules (IFR), reducing control forces to zero (trimmed flight) under most flight conditions is important. This commenter contends that requiring the airplane to be in trim, laterally and directionally, at only one speed is inadequate. A proposed text for § 23.161(b)(2) is offered by this commenter. The commenter also suggested that the requirements of § 25.161(d) be added to the rule. In addition, this commenter states that with the current advances in the design of commuter category airplanes, an out-of-trim requirement, similar to § 25.255 should be included in Subpart B—Flight. Another commenter notes that the proposal is unclear in that it appears to allow a 10-pound, out-of-trim force under the 3-degree approach requirement for commuter category airplanes. The FAA has reexamined the proposal and considered each of the comments received addressing the proposed changes to § 23.161. The FAA agrees with the comment that the current requirement of § 23.161(c)(2) is an adequate minimum standard and consequently withdraws the proposed changes for § 23.161(c)(2). The FAA does not agree that, as a minimum airworthiness standard, commuter category airplanes should be required to be in trim laterally and directionally at speeds other than that stated in § 23.161(b), as proposed. The FAA is not aware of any adverse experience concerning the lack of requirements at other speeds for the commuter category size airplanes. With the exception of lateral trim, the FAA considers the current requirement of 23.161(d) substantially equivalent to § 25.161(d) and no adverse experience has been shown because of the lack of a lateral trim requirement in § 23.161(d). The FAA does not agree that a requirement is needed similar to § 25.255, Out-of-trim characteristics, for commuter category airplanes. The background indicates the requirement was promulgated because of more rapid fuel burnoff with rapid center of gravity shifts in transport airplanes, and due to new designs for handling aerodynamic balance by fuel transfer for normal operations. The FAA is not aware of any adverse service experience because of the lack of such a requirement for airplanes limited to size approaching that of the new propeller-driven commuter category. The FAA concludes, therefore, a requirement similar to the out-of-trim requirement in § 25.255 is unnecessary.

Proposal 17.—No comments were received pertaining to the proposed amendment of § 23.173, Static longitudinal stability. Accordingly, the requirement is adopted as proposed.

Proposal 18.—One commenter contends that proposed § 23.175(b)(1)(i) is incorrect and current § 23.175 language more accurately describes the section intent and should read as follows: "The speed need not be less than $1.4V_{S1}$ for commuter category airplanes, or $1.3V_{S1}$ for other categories." Another commenter states that since § 23.1583(a)(3)(iii) requires speed limits for commuter category airplanes to be in terms of $V_{MO}/M_{MO}$ the existing § 23.175(b)(1)(i) does not need to be changed since the speeds are covered adequately by existing § 23.175(b)(1)(iii). This commuter states that since § 23.21(a) requires all "flight" requirements to be met "at each appropriate combination of weight and center of gravity within the range of loading conditions of weight and center of gravity within the range of loading conditions for which certification is requested," the proposal to evaluate the cruise static longitudinal stability of commuter category airplanes at the maximum takeoff weight is redundant and unnecessary. In addition, this commenter states that the requirement for static longitudinal stability in the cruise configuration of Part 135, Appendix A, paragraph 9(b) has in the past been viewed as a replacement for the high-speed and low-speed cruise static longitudinal demonstrations of § 23.175(b). Since only minor changes to § 23.175(b) have been proposed, an explanation and clarification is needed. The FAA has reexamined the proposal, the requirements of Part 135, Appendix A, § 9(b) (which is the cited source for the proposal), and the comments received. The proposal needs to be revised to more clearly express the requirements set forth in the cited source. Accordingly, § 23.175(b) is revised and adopted to achieve this clarification of the high speed cruise requirement for commuter category airplanes.

Proposal 19.—No comments were received to the proposal. Accordingly, § 23.333 is amended as proposed.

Proposal 20.—No comments were received to the proposal. Accordingly, § 23.335 is amended as proposed.

Proposal 21.—No comments were received to the proposal. Accordingly, § 23.337 is amended as proposed.

Proposal 22.—No comments were received to the proposal. Accordingly, § 23.349 is amended as proposed.

Comment to § 23.397. For commuter category airplanes, one commenter contends that the Footnote 1 to the table of forces in § 23.397 should be changed to read as follows: ". . . the specified maximum values must be increased linearly with weight to 1.35 times the specified values at a design weight of 19,000 pounds." This commenter suggests a review of CAR 3.212 for the intent of the footnote. Upon review of CAR 3.212 and earlier requirements, the FAA finds that it was included prior to establishment of a 12,500 pound weight limit for small airplanes and called for the provided maximum control forces at 5,000 pounds to be increased linearly with weight by a factor of 1.0 at 5,000 pounds to a factor of 1.5 at 25,000 pounds. This footnote continued to read the same in CAR 3 after the adoption of the 12,500 weight limitation by Amendment 3–10, effective May 16, 1953. When CAR 3 recodified into Part 23, this note was revised to call for the maximum forces to be linearly increased with weight to 1.18 times the specified values at a design weight of 12,500 pounds which is the factor that would have been obtained from the linear increase called for in the CAR 3 footnote. The review of CAR 3.212 has shown that the recommended changes would only identify and continue provisions which have been required for airplanes of this size under previous airworthiness standards. Since this recommended change is consistent with previously applied airworthiness standards and will be clarifying by providing the value of the linearly increased factor at the new maximum design weight of 19,000 pounds, the FAA agrees with the contention of this commenter. Footnote 1 to § 23.397 is amended to the extent that the linear increase must be to 1.35 times the specified values at the maximum permissible weight of 19,000 pounds for the commuter category airplanes.

Proposal 23.—No comments were received to the proposal. Accordingly, § 23.443 is amended as proposed.

Comment to § 23.561.—For commuter category airplanes, one commenter notes that no proposal has been made to

strengthen the maximum load factors of § 23.561 associated with emergency landing conditions. This commenter contends that the ultimate inertia forces contained in § 23.561 are far below the level the human body is capable of withstanding. The commenter cites the National Tansportation Safety Board (NTSB) 1981 report entitled "Cabin Safety in Transport Category Aircraft" as the source of this information. In response to this comment, the purpose of the proposal was not to reevaluate the maximum load factors associated with emergency landing conditions for all airplanes to be type certificated pursuant to Part 23 at this time. The FAA is considering a revision to the requirements of § 23.561 within the framework of the Part 23 Airworthiness Review. The comment is beyond the scope of Notice No. 83–17 and cannot be acted on as a part of this rulemaking.

Proposal 24.—One commenter's opinion is that the structural cornerstone of the safety objectives for transport category airplanes is the requirement that structure should be designed to be damage tolerant unless it can be demonstrated, for particular structural features, that this is impractical. In the latter case, according to the commenter, a safe life evaluation must be made using appropriate scatter factors, and, in practice, this has meant that each primary structure, apart from the landing gear, is required to be damage tolerant. Consequently, catastrophic failures due to fatigue, corrosion, or accidental damage would be avoided. The commenter contends that the NPRM, as presented, allows but does not encourage the adoption of the damage tolerance approach to long-term structural integrity. The comment is made that while the safe-life approach is still valid for the majority of airplanes presented for certification under Part 23 which, because of their low utilization, will never approach their theoretical life limits or which can draw upon a long history of satisfactory service experience on similar designs, the safe-life concept is inappropriate for new commuter category airplanes which will be subjected to a more intensive utilization which equals or exceeds the usage attained by larger transport airplanes. The commenter states that the additional protection against catastrophic structural failure due to corrosion, stress corrosion, accidential damage, or discrete source damage which can accrue from a damage tolerant design policy will bring those safety benefits necessary to meet the FAA safety objectives for this type of airplane. The FAA recognizes the merit of a damage tolerant design; however, the service experience with airplanes recertificated to SFAR No. 41 with their corresponding high utilization does not support the need for a mandatory damage tolerant design philosophy for commuter category airplanes.

Proposal 25.—No comments were received to the proposal. Accordingly, § 23.677 is amended as proposed.

Proposal 26.—No comments were received to the proposal. Accordingly, § 23.721 is adopted as proposed.

Proposal 27.—No comments were received to the proposal. Accordingly, § 23.783 is amended as proposed.

Comment to § 23.785. Section 23.785, Seats, berths, safety belts, and harnesses. One commenter contends that the problem of inadequate seat strength is well known, and this is an opportunity to bring the requirements closer to reality. The FAA is aware of the possibility that seat-strength requirements in certain areas should be enhanced and it is engaged in research aimed at proposing realistic and attainable dynamic criteria for all seats in small airplanes. To propose requirements before this research is completed, or has at least progressed to the point that realistic criteria are available for application in type certification programs would be premature.

When Notice No. 83–17 was issued proposing the addition of a commuter category airplane to Part 23, the applicable amendment of Part 23 at that time required the installation of a seat belt and shoulder harness for the front two seats and seat belts for all additional seats. Subsequent to the issuance of Notice No. 83–17, the FAA, in response to a petition for rulemaking, proposed the mandatory installation of shoulder harnesses at all seats in normal, utility, and acrobatic category airplanes with a passenger seating configuration, excludig pilot seats, of nine or less. Amendment 23–32 (50 FR 46872, November 13, 1985) adopted the proposals substantially as set forth in Notice No. 85–11 and because final action had not occurred on the commuter category airplane proposals, the above identified occupant restraint requirements applicable at the time the commuter category airplanes was proposed were removed from § 23.785(g) and replaced by those requirements in Amendment No. 23–32. Since these later adopted requirements do not address the commuter category airplane, the deleted occupant restraint requirements are being reinstated for commuter category airplanes in § 23.785(g)(2) and the requirements adopted by Amendment No. 23–32 applicable to normal, utility, and acrobatic category airplanes are designated in § 23.785(g)(1).

The FAA is considering additional cabin safety and occupant protection requirements for the communter category airplane and will initiate appropriate rulemaking action to address this issue after a thorough study of the need and substance of such additional requirements indentified from the study.

Proposal 28.—One commenter states that the proposed § 23.787(g)(2) should read, ". . . in paragraphs (a), (b), and (f) of this section." The FAA agrees with the comment and the addition of paragaraph (f) clarifies that the requirement applies to baggage compartments as well as cargo compartments in commuter category airplanes since Part 23 does not distinguish between cargo and baggage compartments.

Another commenter contends that the cargo compartment regulations are insufficient in that most designs have only a porous bulkhead aft and closed inaccessible areas forward. The commenter states that no design for fire retardation or fire extinguishing in these compartments exists and the requirement should incorporate the standards of §§ 25.855 and 25.857. In support of this comment, the commenter states that in the last 3 years alone, one commuter air carrier had four incidents of smoke/fire in unprotected cargo compartments in SFAR No. 41 airplanes. These incidents were caused by various devices shipped by passengers. The contention is that there was no way the crew could have reached a compartment to extinguish a fire if it had occurred. The FAA does not agree that the standards of §§ 25.855 and 25.857 should be adopted for commuter category airplanes. Amendment 23–14, effective December 20, 1973, requires that cargo compartments in all Part 23 airplanes be constructed of materials which are at least flame resistant. Not all cargo compartments in Part 25 airplanes are required to have fire estinguishing provisions, specifically Class D cargo compartments. The FAA considers the requirements as proposed in Notice No. 83–17 for cargo compartments in commuter category airplanes sufficient. Therefore, the additional requirements applicable to commuter category airplanes are adopted as proposed.

Proposal 29.—One commenter states that § 23.807(d)(1)(i), as proposed, should read, "For a total seating capacity of 12 to 15, an . . . ." This commenter contends that SFAR No. 41,

as originally written, overlooked the possibility of airplanes with 11 or fewer seats. The FAA does not agree since normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of nine or less with exceptions for airplanes with centerline- or fuselage-mounted engines, must have an emergency exit on the opposite side from the main door as specified in § 23.783. The FAA considers that the minimum acceptable nunber of emergency exists for commuter category airplanes are those proposed for a total seating configuration of 15 or less to assure adequate egress in an emergencey situation by a substantiating emergency evacuation test.

Another commenter contends that the proposed regulations are insufficient and should conform to § 25.807, to § 25.809(a) and most importantly to § 25.809(b). While these exits must be openable from the inside and the outside, the contention is that common sense and experience dictate that rescue personnel should be able to locate and open these exits from the outside. In addition, this commenter states that the exits should be marked as in § 25.811 and, specifically, must be marked on the outside in accordance with § 25.811 (f) and (g). The FAA recognizes some merit in the contentions of this commenter; however, the FAA considers the proposed requirements to be sufficient and points out that § 23.783(c), as adopted, requires each external door to be openable from the outside. The issues raised by this commenter need further study before the FAA issues further regulations. These issues are being considered in the Part 23 Airworthiness Review Program. In addition, the FAA has issued Advisory Circular (AC) 23.807-3, dated January 20, 1984, Subject: "Emergency Exits Openable From Outside for Small Airplanes," on the subject of making exits openable from the outside, and the Advisory Circular responds to NTSB Safety Recommendation A-82-94. The FAA is not aware of service problems with airplanes recertificated to SFAR No. 41 that would support adoption of the Part 25 requirements.

Proposal 30.—One commenter suggests that, for consistency with Part 25, the proposed § 23.809 be presented under § 23.803. Also, to ensure reliable results from the evacuation demonstration, the criteria of § 25.803(c), which is not presented in the proposal, should be incorporated or published as advisory material. The FAA finds merit in the section consistency suggestion and the section is renumbered accordingly. In response to this commenter's suggestion with regard to § 25.803(c), reference should be made to the guidance material of Advisory Circular No. 20-118, "Emergency Evacuation Demonstration From Small Airplanes," dated July 12, 1983. The Advisory Circular sets forth acceptable means, but not the only means, of showing compliance with required emergency evacuation demonstrations from small airplanes. The FAA considers it a satisfactory method of compliance with the regulation as adopted in this final rule.

Proposal 31.—One commenter contends that the proposed requirement is not consistent with "real world" problems. The assertion is that present designs do not allow for the safe and reasonable carriage of handicapped persons on board and the 9- to 15-inch minimuns for aisle widths, as called for by this NPRM, are not wide enough to accommodate the standard lift chair used to bring nonambulatory persons aboard. At present, handicapped persons usually have to be placed by the cabin door and, in case of an emergency, could block rapid evacuation. This commenter states that a standard width of 21 inches should be the minimum allowed for any airplane which seats more than 10 passengers and notes that narrow aisles also restrict the entrance and exit of passengers, especially if they are older. The FAA appreciates the concern expressed by this commenter for handicapped persons; however, the service experience with current airplanes meeting the minimum standards of aisle width do not support the need for a change as proposed by this commenter. Another commenter states that the Notice proposes to narrow the minimum aisle width by one-fourth of that required for 10- to 19-seat airplanes in Part 25. This commenter contends that minimum aisle width is an important safety feature if evacuation becomes necessary and that Part 25 standards should be retained. The FAA does not agree that for the new commuter category of airplane the minimum aisle width needs to be the same as set forth for the transport category airplane. The minimum aisle width proposed in the Notice No. 83-17 was the same as that used for the recertification of SFAR No. 41 airplanes. The FAA is not aware of any service-related problems with airplanes so recertificated which indicate the minimum width of the aisle is not adequate. Therefore, the minimum width for the main aisle is adopted as proposed.

Proposal 32—One commenter notes that the word "probably" in the second sentence of § 23.831(b) as proposed should read "probable." The FAA agrees and the spelling is corrected.

Another commenter states that the expression "harmful or hazardous concentration of gases and vapors" needs to be defined and criteria specified. The FAA does not agree that further definition is needed in the regulations. The maximum concentration of carbon monoxide permissible has been stated in § 23.831(a). The requirement is stated in objective terms to convey the purpose of the rule. In addition, the requirement has been applied in the SFAR No. 41 recertification of airplanes and also in the certification of transport category airplanes without any known adverse experience. The amendment is adopted as proposed.

Proposal 33—No comments were received to the proposal to add a new § 23.851. Accordingly, the requirement is adopted as proposed.

Proposal 34—One commenter contends that the proposal does not succeed in accurately incorporating the interior materials burn test requirements of § 25.853. The most serious is the omission of the 12-second vertical burn test of § 25.853(b) required by its reference to Part 25, Appendix F, paragraph (d). The FAA agrees with the commenter. The requirements, as stated, would require a vertical test with the flame applied for 60 seconds, whereas § 25.853(b) requires an application period of 12 seconds. The time period for application of the flame to materials of § 23.853(d)(3)(ii), therefore, is reduced from 60 seconds to 12 seconds. This commenter notes that in § 23.853(d)(1) the word "towel" should be plural and the word "probably" in the second sentence should read "probable." The FAA agrees and these changes are made in the final rule. This commenter suggests that the phrase "or other equivalent methods" be changed to read "or other approved equivalent methods" in order to conform to the reading of Part 25. The FAA agrees and has incorporated the phrase "or other approved equivalent methods" in § 23.853(d)(3)(ii), as suggested.

One commenter states that the address in § 23.853(d)(3)(iii) for the American National Standards Institute should be 413 Broadway, New York, New York 20018. In addition, the commenter contends that the motion picture film safety requirement is not needed for commuter category airplanes and should be deleted. Inquiry was made to the American National

Standard Institute, and the address stated in Notice No. 83–17 is correct as of this date. The motion picture film safety requirement may not be needed for a particular commuter category airplane design. The requirement is retained, therefore, to assure that the minimum standards are met when motion picture film is used on commuter category airplanes.

Another commenter agrees with the revisions to § 23.853 where major portions of Part 25 were incorporated. This commenter, and two additional commenters, recommend that § 23.853 incorporate the requirements proposed in Notice No. 83–14 (48 FR 46250; October 11, 1983) on the subject of flammability requirements for aircraft seat cushions for commuter category airplanes and make changes to Part 135 similar to the changes made to Part 121 in Notice No. 83–14. The contention is that this improvement is even more critical for the commuter category since, most likely, a flight attendant will not be available to take initial emergency action to extinguish a fire. Furthermore, post crash fires pose a serious problem for commuter airplanes and no logical reason appears as to why new designs should not incorporate this life-saving technological improvement.

The FAA appreciates the concerns expressed by the commenters on the issue of requiring seat cushions in commuter category airplanes to meet the test criteria proposed in Notice No. 83–14. The FAA recognizes the merit of the comments. Further study is required, however, with respect to commuter category airplanes and operations conducted in accordance with Part 135. These issues will be considered in the Part 23 Airworthiness Review.

Proposal 35—One commenter contends that § 23.901(b)(3) appears to be redundant as the installation will have to meet the conditions identified in the installation manual required by § 33.5. The FAA notes that § 33.5 does not specifically address vibration characteristics which are a significant consideration in the installation of turbopropeller engines in commuter category airplanes and the requirement has been applicable to airplanes certificated to the additional airworthiness standards of Part 135, Appendix A, since 1970. Therefore, the requirement is adopted as proposed.

Proposal 36—One commenter contends that § 23.903(e)(2) should be revised to read: "Means must be provided for stopping combustion and rotation of any engine in flight except that engine rotation need not be stopped if continued rotation could not jeopardize the safety of the airplane." This commenter states that this conforms to the Part 25 requirement and provides a needed clarification, and the last part of proposed subparagraph (e)(2) should be deleted because it already appears in subparagraph (d)(2)(iii) of this section. The FAA does not agree that § 23.903(e)(2) should be revised as suggested. First, the proposed requirement of Notice No. 83–17 with respect to stopping combustion and rotation has been required for turbine engines in all Part 23 airplanes since the adoption of Amendment 23–14, effective December 20, 1973, and no reason is offered by the commenter to support the suggested change. Secondly, the last part of proposed § 23.903(e)(2) concerns the requirements for restarting the engine while § 23.903(d)(2)(ii) concerns requirements for stopping the engine. Another commenter contends that the proposal is insufficient and should reflect the provisions of § 25.903, especially paragraph (d)(1). This commenter states that most commuter/turboprop operators have reported one or more rotor failures per year with the resultant disintegrating residue piercing the fuselage at the pilot's or passenger's compartments. Another commenter states essentially the same concern. The FAA concurs, in part, with these comments. Part 23, however, was revised by Amendment 23–29, effective March 26, 1984 (49 FR 6847; February 23, 1984) and adequately addresses the issue of rotor failure in § 23.903(b)(1). One commenter states that the proposed revision to § 23.903(e)(2) is not in accordance with the referenced sources because neither Part 135, Appendix A, paragraph 38(a)(2) nor § 25.903(c) require a means for stopping the rotation of a turbine engine. This commenter contends that such a feature is required only where continued rotation could jeopardize the safety of the airplane and states that the requirement to stop rotation is both restrictive and unnecessary. The commenter suggests that § 25.903(c) replace proposed § 23.903(e)(2). The FAA agrees with the commenter that the requirement for stopping combustion and rotation of the turbine engine is not in the reference sources of Part 135, Appendix A or in § 25.903(c). The requirement is required by the current version of § 23.903(e)(2). The commenter offers no data or information to support a change from the present requirement. Accordingly, the requirements are adopted as proposed.

Another commenter notes that systems within a fire zone that are required to be functional after the outbreak of a fire need to be merely "fire-resistant" and perceives an inconsistency between the "fireproof" and "fire-resistant" definitions of Part 1. This commenter contends that for fire-extinguishing systems to be effective and for continued safe flight, the engine must be stopped and the propeller feathered. That commenter suggests that the requirement should be updated to "fireproof." The FAA does not agree. Part 1 defines "fire resistant," in part, as "... the capacity to perform their intended functions under the heat and other conditions likely to occur when there is a fire at the place concerned." Accordingly, the proposal is adopted as stated in Notice No. 83–17.

Proposal 37.—No adverse comments were received to the proposal. Accordingly, the requirements are adopted as proposed.

Proposal 38.—One commenter contends that the proposed requirement is insufficient and should incorporate all of § 25.963. Additionally, the commenter states that most designs cannot comply with paragraphs (c) and (f) of § 23.963. The FAA does not agree that the requirements are insufficient or that most designs cannot comply with the standards. A review of the provisions of Part 23, together with § 23.963(f), and § 25.963 shows that the wording of § 23.963(a) and (c) are substantially identical to the wording of § 25.963(a) and (c), respectively. Paragraph (c) of § 23.963 and § 25.963 sets forth requirements for flexible fuel tank liners; i.e. § 23.963(c) requires each flexible fuel tank liner be of an acceptable kind while § 25.963(c) requires flexible fuel tank liners be approved or shown to be suitable for the particular application. The FAA considers these requirements substantially equal. Proposed paragraph (f) of § 23.963 is essentially the same as § 25.963(d), except for the differences in downward ultimate inertia forces between those listed in §§ 23.561 and 25.561 respectively. The substantive differences between §§ 23.963 and 25.963 occur in § 25.963(f) which contains specific requirements for pressurized fuel tanks to prevent the buildup of an excessive pressure between the inside and outside of the tank. The FAA is not aware of any adverse service experience because § 23.963 did not address pressurized fuel tanks in Part 23 airplanes. Moreover, the commenter did not present any information or data to support the contention that present requirements are insufficient. Accordingly, the requirements are adopted as proposed.

Proposal 39.—The FAA received no adverse comments to the requirements as proposed. Accordingly, the revision

to § 23.997 is adopted as stated in the Notice No. 83–17.

Comments to Section 23.1143. Section 23.1143, Engine controls. One commenter contends that § 23.1143 should be revised to require a flight-idle gate as required by Part 135, Appendix A, paragraph 51. The FAA does not agree that § 23.1143 needs to be revised as recommended by the commenter and the requirement of § 23.1143(f) was revised by Amendment 23–17, effecive February 1, 1977, and provides an equivalency to that of Part 135, Appendix A, paragraph 51, with respect to a flight-idle gate, as stated by this commenter.

Proposal 40.—The FAA received no adverse comments to this proposal. Accordingly, the requirement is adopted as proposed.

Proposal 41.—The FAA received no adverse comments to this proposal. Accordingly, the requirement is adopted as proposed.

Proposed 42.—The FAA received no adverse comments to this proposal. Accordingly, the requirement is adopted as proposed.

Proposal 43.—One commenter contends that the proposed requirements for fire-extinguishing systems are inadequate and should meet the standards contained in § 25.1195. This commenter states that passengers to and from the smaller communities deserve the same level of safety in this area as those flying transport category airplanes. Another commenter supports a requirement equal to the standards of § 25.1195 and contends that the General Accounting Office (GAO) study of safety standards on small passenger airplanes. This commenter states that the GAO report cites numerous fatal accidents caused by fire which started in the engine and spread to the wing. The January 4, 1984, GAO report is identified as "U.S. Government Accounting Office, *Report to Congress: Safety Standards on Small Passenger Aircraft With Nine or Fewer Seats Are Significantly Less Stringent Than On Larger Aircraft.*" A third commenter states that proposed § 23.1195 could cause interpretation difficulties and recommends that for commuter category airplanes, fire zones should be defined and treated in a manner similar to that of Part 25.

The FAA has carefully compared the requirements of §§ 25.1195 and 23.1195. Except for the "each designated fire zone" provision in § 25.1195, the requirements of paragraphs (a) of §§ 23.1195 and 25.1195 were found to be identical. With the exception of designated fire zones, the substantive requirements of paragraphs (b) of §§ 23.1195 and 25.1195 are contained in the first sentence of each subsection and are identical in wording. Section 25.1195(b) states "how compliance must be shown" in the second sentence of the paragraph, and a similar phrase is not contained within the proposed § 23.1195(b). The third sentence of § 25.1195(b) is permissive with respect to the use of individual "one-shot" systems for auxiliary power units, fuel burning heaters, and other combustion equipment. The fourth sentence of § 25.1195(b) requires for each other designated fire zone, two discharges must be provided, each of which produces adequate agent concentration; whereas § 23.1195(b) permits an individual "one-shot" system if all other requirements are met by the fire extinguishing system submitted for approval. The wording and, thus, the requirements of paragraphs (c) of §§ 23.1195 and 25.1195 are the same, except § 23.1195 addresses "each compartment"; whereas, § 25.1195 addresses "each zone." The FAA, therefore, does not consider the requirements as proposed in § 23.1195 to be inadequate. Contrary to this commenter's contention, the FAA has determined that the requirements for fire extinguishing systems in commuter category airplanes, with the exceptions noted above, are substantially equal to those required in transport category airplanes. The FAA does not find that the "fire zones" concept for commuter category airplanes is needed.

Proposal 44.—No adverse comments were received to the proposal. Accordingly, the requirements are adopted as proposed.

Proposal 45.—No adverse comments were received to the proposal. Accordingly, the requirements are adopted as proposed.

Proposal 46.—One commenter notes that § 23.1201(b) requires that components in an engine compartment must be "fireproof" and that provision is consistent with the philosophy of having a serviceable fire-extinguishing system for the full period during which a fire is expected to burn. The FAA agrees and the commenter correctly states the reason each system component of a fire-extinguishing system must be fireproof. Accordingly the requirements are adopted as proposed.

Proposal 47.—One commenter notes that § 23.1203(e) only requires a "fire resistant" standard for wiring and other components of the fire detector system and considers it to be inconsistent with other fire protection requirements. This commenter contends that the last event in the successful accomplishment of fire extinguishment of an engine fire is the resetting of the engine fire detector. This is of particular significance on engine installations where the nacelle is not visible from the flight deck. This commenter suggests that the requirement be upgraded to "fireproof" for wiring and other components of the fire detector system. The FAA does not agree with the need to upgrade the "fire-resistant" standard. Part 1 defines "fire resistant" in part, as follows, "With respect to fluid-carrying lines, fluid system parts, wiring, air ducts, fittings, and powerplant controls, "fire resistant" means the capacity to perform the intended functions under the heat and other conditions likely to occur when there is a fire at the place concerned." The FAA has determined the requirement, as stated, is appropriate for fire detector systems and a revision of the section is not needed. Accordingly, the requirements are adopted as proposed.

Comment to Subpart F of Part 23. One commenter states that, in general, the FAA proposals for the systems and general designs of SFAR No. 41C brought the general requirements up to an acceptable level. The FAA agrees with this general comment.

Proposal 48.—One commenter questions the need for a manifold pressure indicator for engines other than altitude engines; however, since the manifold pressure indicator may give the crew warning of developing engine trouble, the commenter does not oppose the proposal if no objection is received on economic grounds. The FAA received no other comments on this proposal. The requirement has been applied to recertification of SFAR No. 41 airplanes without adverse service experience. Accordingly, the requirement is adopted as proposed.

Proposal 49.—One commenter contends that experience has shown that proposed § 23.1309(d) was subject to gross misinterpretation as Part 135, Appendix A, § 59, and its intent should be clarified; i.e., flight safety and not some nonessential function that may have been peripherally involved in certification. This commenter states that the second sentence of § 23.1309(d) should be revised to read: "Where an installation, the functioning of which is essential to safe flight, requires a power supply, the installation must be considered an essential load on the power supply." The FAA does not agree because where an installation requires a power supply and its function is necessary to show compliance with the applicable requirements, the installation must be considered an essential load on the power supply and, accordingly, the

applicable requirements are minimum requirements to type certification.

Another commenter states that although portions of § 25.1309 were incorporated into the proposed § 23.1309, the commenter sees no justification for not incorporating the whole of § 25.1309 into Part 23. The commenter offers no data or reasons in support of the contention that the proposal is not adequate or appropriate except that it does not incorporate the requirements of § 25.1309. In the absence of information of the contrary, the FAA finds the proposed standards appropriate to the commuter category airplane at this time.

One commenter suggests that the expression "safeguard against hazards" should be defined and clarified. Experience with recertification of airplanes to this requirement has not been adverse or controversial. However, § 23.1309 is being reevaluated in the Part 23 Airworthiness Review Program and these concerns will be addressed relative to all small airplanes. Accordingly, § 23.1309(d) is adopted as proposed.

Proposal 50.—No adverse comments were received to the proposal. Accordingly, the requirements are adopted as proposed.

Proposal 51—No adverse comments were received to the proposal. Accordingly, the requirements are adopted substantially as proposed.

Proposal 52—One commenter notes that proposed § 23.1351(b)(2), (3), and (4) exclude commuter category airplanes from the present provisions of § 23.1351 concerning excitation of alternators. This commenter contends that these changes are not a part of the requirements of SFAR No. 41 or of Part 135, Appendix A and, therefore, should be removed. The FAA does not agree. Part 135, Appendix A, paragraph 61(b), requires in part, that the generating system must be designed so that the system voltage at the terminals of all essential load can be maintained within the limits for which the equipment is designed during any probable operating condition. The failure of the battery, as permitted by § 23.1351(b)(3), may result in the loss of the alternator and the failure of the battery is considered a probable operating condition. The requirements, therefore, are adopted as proposed.

Another commenter states that § 23.1351(b)(5)(ii) supersedes § 23.1307(b)(1) and provides a higher level of system reliability. This commenter contends that a single master switch, as required by § 23.1307(b)(1), will increase the probability of a total generator electrical failure. This commenter recommends revision of § 23.1307(b)(1) to read: "(1) Except for commuter category airplanes, a master switch arrangement . . ."

The FAA does not agree that revision of § 23.1307(b)(1), as suggested by this commenter, is needed. The master switch arrangement requirement, not necessarily a single master switch as contended, assures expeditious disconnection of all electric power sources by a single action of the pilot for all load circuits in an emergency situation. The requirements are adopted as proposed.

Proposal 53—No adverse comments were received to the proposal. Accordingly, the requirements are adopted as proposed.

Proposal 54—One commenter states that to keep the Airplane Flight Manual requirements consistent with transport airplane standards, the relief provided by § 23.1581(b)(2) should not be allowed for commuter category airplanes and further contends that distinguishing approved information from unapproved information is important. This commenter recommends the addition of "Except for commuter category airplanes," before the words, "The requirements of paragraph (b)(1) . . ." in § 23.1581(b)(2). The FAA does not agree with the recommended revision of § 23.1581(b)(2) because the requirements, as stated, are considered clear and understandable regarding approved information and unapproved information in the Airplane Flight Manual.

No adverse comments were received to the proposed new paragraph (e) to § 23.1581. Accordingly, the requirement is adopted as proposed.

Proposal 55—One commenter states that zero fuel weight should be a limitation in accordance with SFAR No. 41, paragraph 4(a). The FAA agrees and the requirements of § 23.35, Weight limits, have been revised accordingly.

Another commenter contends that the operating limitations are insufficient, stating that even if spins are not approved, the commuter category airplane should be tested for spin recovery, which is not required by this regulation. This commenter further contends that a standard method of spin recovery based on these tests should be in the Airplane Flight Manual. The FAA does not agree that commuter category airplanes should be tested for spin recovery because there is no requirement to test any multiengine airplane, normal category or transport category, for spins and spin recovery. This commenter offers no information or data to support a spin and spin recovery requirement.

One commenter states that the requirements of § 23.1583(c)(3)(ii) concern ICAO Annex 8 compliance and should be deleted or made optional. The FAA does not agree. The issue of compliance with the requirements of ICAO Annex 8 has been discussed in detail previously in this preamble. Accordingly, the requirement of § 23.1583(c)(3)(ii) is adopted as proposed. This commenter contends that the reference to § 23.57 in proposed § 23.1583(c)(3)(iii) should be deleted. The FAA does not agree. This comment is directly related to establishing the operating limitations for the safe operation of commuter category airplanes and complying with the minimum requirements of ICAO Annex 8. Accordingly, the requirement is adopted as proposed.

Another commenter states that the detailed provisions of proposed § 23.1583(c)(3) depend upon the final form taken by the earlier requirements dealing with establishing takeoff, climb, and landing performance data. This commenter contends that since many of the performance requirements for transport category airplanes have been proposed for commuter category airplanes, any proposal for requirements relating to performance operating limitations should at least follow a review of the existing provisions of § 25.1533 and JAR 25.1533. The proposal to require performance operating limitations relating to continued and abandoned takeoff distances, takeoff and initial en route climb minima, landing distance, and go-around climb gradient minima is supported by this commenter. This commenter offers a text which does not differ fundamentally from proposed § 23.1583(c)(3). Some detailed differences do exist, however, which stem from changes proposed to the requirements relating to establishing performance and an effort to more closely align to the existing provisions of § 25.1533, JAR 25.1533, §§ 121.189 and 121.195. A new section, § 23.1533, Additional operating limitations, is suggested by this commenter. The commenter's proposal for § 23.1533 covers all flight phases in the proposed § 23.1583(c)(3) of the Notice plus the takeoff run. The commenter states that the takeoff run constraint is necessary if credit is to be allowed for clearways in showing compliance with the takeoff performance operating limitations. This commenter notes that both the FAA and the commenter's proposals for commuter category airplane performance operating limitations go somewhat beyond the corresponding provisions for transport category airplanes of § 25.1533 and JAR

25.1533, since the proposal in the Notice includes consideration of landing distance. The FAA has carefully considered the comments and suggestions of this commenter. The FAA does not agree that the inclusion § 23.1583(c)(4)(i) of the weight at which landing distance is determined in showing compliance with § 23.75 goes beyond the provisions in § 25.1533. Section 25.1533(a)(2) includes an equivalent requirement for transport category airplanes.

Notice No. 83–17 sets forth requirements which include the intent of the commenter's suggested change. Structuring the airworthiness standards of Part 23 in exactly the same manner as Part 25 or JAR 25 is not needed. Therefore, the requirements are adopted as proposed in the Notice, except that in § 23.1583(c)(4)(i) "landing field length" is changed to "landing distance" to conform with § 23.75 as intended in the reference to § 23.75 in § 23.1583(c)(4)(i).

Proposal 56—One commenter contends that the procedures for a number of maneuvers, unique to the type certification of commuter category airplanes, should be covered in a new subparagraph § 23.1585(c)(5). These procedures are for continued takeoff following engine failure, an abandoned takeoff, an approach and landing with one engine inoperative, and a one-engine-inoperative go-around. This commenter offers a test for each of these procedures. The FAA does not agree that a requirement shoud be added to § 23.1585, Operating procedures, to specify each type of procedure. The present requirements plus those contained in new paragraph (h) are adequately stated in objective form and encompass the normal and emergency procedures necessary for safe operation of the commuter category airplane. Accordingly, the requirement is adopted as proposed.

Proposal 57—One commenter contends that the FAA proposal appears to be incomplete in that by cross-referencing § 23.1585, the requirement does not exist for the Airplane Flight Manual (AFM) to contain all of the performance data established in accordance with Subpart B—Flight. This commenter offers a revised text as an alternative to § 23.1587(d)(1) as proposed.

The current requirements of Subpart G—Operating Limitations and Information, however, state the overall requirements in an objective manner to assure safe operation of the commuter category airplane. The current requirements, plus those adopted by this amendment, are considered to be appropriate and assure safe operation of commuter category airplanes at this time. In this regard, the reference to § 23.1585 in § 23.1587(d)(1) should read § 23.1583 because it relates to the takeoff weight limits in § 23.1583 rather than the operating procedure of § 23.1585. Accordingly, § 23.1587(d)(1) is adopted as proposed with the exception of the substitution of § 23.1583 for § 23.1585.

One commenter contends that the text of § 23.1587 (d)(2), (d)(4), and (d)(6), as proposed, relates to operating procedures rather than to performance information and is covered by the commenter's proposed revised text of § 23.1585(c)(5). The FAA does not agree that these requirements relate to operating procedures as such, but rather state the parameters of the conditions under which the performance information was obtained. An examination of the performance information requirements for transport category airplanes revealed similar requirements in § 25.1587, Performance information. Accordingly, § 23.1587 is adopted as proposed except as noted in the previous paragraph with regard to § 23.1587(d)(1).

One commenter contends that the extrapolated performance data required by § 23.1587(d)(3) should be available for all airplanes for which the maximum takeoff weight exceeds the maximum landing weight and the requirements of § 23.1587(d)(5) should not be limited to just the commuter category airplane. The FAA recognizes the merit of these comments; however, these comments are outside the scope of this rulemaking action.

Proposal 58—One commenter notes that paragraph (b) of Appendix F of Part 23, does not address tests for small parts or wire and cable insulation and should be amended by prefacing paragraph (b) with the words: "Except as provided for materials used in electrical wire and cable insulation and in small parts, . . . ." In addition, this commenter states that paragraph (b) should be revised to refer to tests under paragraphs (d) and (e) of this Appendix plus instructions for mounting the specimen referred to in paragraph (e). The FAA has determined that the prefacing words suggested are not appropriate to paragraph (b) because if the Administrator finds that these items would contribute significantly to the propagation of a fire, these items must then be tested as stated in § 23.853(d)(3)(v) or by other approved equivalent methods. The FAA agrees with the commenter that paragraph (b) of Appendix F should be revised to refer to the tests under paragraphs (d) and (e), not just paragraph (d) of the Appendix. The FAA also agrees with the commenter that instructions for mounting the specimen referred to in paragraph (e) should be included, and paragraph (b) is revised to include the instructions for mounting the specimen for the horizontal test of paragraph (e). These instructions are substantially the same as those of Appendix F, paragraph (b) of Part 25 which contain an acceptable test specimen configuration for performing the horizontal test.

Another commenter notes that the minimum temperature at the flame center should be 1550°F as stated in paragraph (d). The FAA agrees, and the temperature is changed accordingly.

Proposal 59—No adverse comments were received to this proposal. Accordingly, the requirements are adopted as proposed.

*Additional Comments*

One commenter recommends inclusion of a number of additional requirements from the airworthiness standards of Part 25 for type certification of the commuter category airplane, which this commenter considered necessary, as a minimum, in any regulation dealing with scheduled air transportation.

The FAA is of the opinion that the public should be made aware of these comments and the disposition of them by the FAA. The following areas of Part 25 were addressed by this commenter. The commenter states the requirements of § 25.631, Bird strike damage, and § 25.775, Windshields and windows, should be included to assure that the empennage and cockpit windows of commuter category airplanes are capable of absorbing a specified bird strike without incurring flight critical damage to the empennage or the cockpit and/or flight crew. This commenter contends that this cagetory of airplane, because of the planned operating altitudes and stage lengths, will normally be exposed to the possibility of bird strike at a greater rate than most Part 25 airplanes, and because commuter category airplane speed below 10,000 feet will not be much different than the transport category of airplane. Therefore, this commenter states that the commuter category airplane should have the same protection from a bird strike as the transport category airplane. The FAA recognizes the possible merit in the recommendation made by this commenter; however, this addition is considered to be outside the scope of the original proposal. The FAA has included the recommendations in the Part 23 Airworthiness Review program.

This commenter contends that § 23.671, Control Systems, General, is too broad and lacks specificity in that it does not address failures of the control system. This commenter states that a definite need exists to address both single and multiple failures of a control system in the manner addressed by § 25.671 and feels confident that most manufacturers are already complying with this requirement; therefore, the requirement should not be a major economic burden. The FAA does not agree that § 23.671 should be revised to read as § 25.671. Part 23 contains other requirements for control systems that provide substantially the same level of safety as does § 25.671. Specifically, the requirements of § 23.677, Trim system, address the failure of a single element in the primary flight control system and require that subsequent to that failure, adequate control should be available for safe flight and landing.

This commenter contends that the requirements of paragraph (b) stated in § 25.1303, Flight and navigation instruments, if made applicable to the commuter category airplane, would give the FAA the authority to require basic flight instruments for both the pilot and copilot and paragraph (c) would require warning devices for the more sophisticated commuter airplanes where compressibility is a factor. The reason given by this commenter for this contention depends on the commenter's interpretation of present Part 23 requirements and may not require flight instruments for both pilot and copilot. The FAA does not agree that the requirements of § 25.1303(b) should be made applicable to the commuter category airplane. The present airworthiness standards provide sufficient flexibility to require flight and navigation instruments at required pilot positions in accordance with § 23.1321 to safely operate the commuter category airplane without adopting the requirements as stated in § 25.1303(b). With regard to the comment addressing warning devices as required by § 25.1303(c), § 23.1303(e) has substantially the same requirement for a speed warning device as § 25.1303(c).

Another commenter stated that present Part 23 requirements permit single source information; e.g., static pressure, to be fed to both the pilot's and copilot's instruments. This commenter contends that reports, especially in pressurized airplanes, have indicated that a leak in one instrument or line has caused all static-sensing instruments on both the pilot's and copilot's panels to become totally useless and damaged. The FAA recognizes the merit of this comment; however, the commenter does not provide any data to support the contention. Additionally, the FAA is not aware of any service difficulty problems with the recertification of airplanes to SFAR No. 41 with single source information. Consequently, the FAA is of the opinion that such a requirement should be reexamined during the Part 23 Airworthiness Review Program.

The comment was received that present Parts 23, 25, 121, and 135 do not address "Floor Proximity Emergency Escape Path Marking." However, Amendments 25–38 and 121–183 (49 FR 43182, October 26, 1984) requiring floor proximity escape path markings for Parts 25 and 121, Rules Docket 23792, address this subject. The commenter recommends that the FAA give serious consideration to incorporating the requirements adopted in Amendments 25–38 and 121–183 into Parts 23 and 135.

Further, recommendations were made that the FAA should consider the requirements of emergency provisions in Part 25 for the commuter category airplane and extend the requirements of § 135.177, Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers, to include the commuter category airplane. If the requirements of § 135.177 were extended to the commuter category airplane, then the requirements of § 121.310 would be included automatically in accordance with § 135.177(a)(4). The FAA has considered carefully the comments made, reviewed the requirements of §§ 135.177 and 121.310, and has concluded that these requirements are overly stringent, considering the distance between the seats and the nearest emergency exit, for the size of the airplane to be type certificated in the commuter category.

This commenter contends that Part 135, Subpart I—Airplane Performance Operating Limitations, authorizes takeoffs at weights that would not allow an airplane to clear all obstacles if an engine should fail after $V_1$ and recommends that §§121.177 and 121.189—Takeoff limitations, should be required for commuter category airplanes operated in accordance with Part 135. The FAA does not agree with this commenter's contention that should an engine fail after $V_1$, the commuter category airplane would not be able to clear all obstacles. The Airplane Flight Manual contains operating limitations related to one-engine-inoperative takeoff and climb requirements and obstacle clearance requirements when operated pursuant to Part 135, and § 135.399 prohibits operations beyond these operating limitations. The FAA also considers the takeoff limitations for Part 135 operations with commuter category airplanes substantially equivalent to those requirements stated in §§ 121.177 and 121.189.

This commenter states that the FAA should not authorize Designated Engineering Representative (DER) or Delegation Option Authorization (DOA) approval of ice protection systems. The contention is that the FAA should be personally involved in both the system approval and flight test program, and this commenter states that their experience has shown that some of those airplanes certificated through the designee program had serious problems with their ice protection systems. The FAA does not agree that designees should be prohibited from the approval of ice protection systems. The involvement of the FAA in approval of ice protection systems by designees is determined on a case-by-case basis. The FAA sees no reason to change this procedure.

This commenter summarizes by stating a belief that the traveling public would be served better if Part 23 remained as presently written and all airplanes configured for 10 or more passengers were classified in the large transport category and certificated to Part 25 as required by Amendment 23–10 (36 FR 2863, February 11, 1971). The commenter contends that if a particular applicant needed relief from a specific portion of Part 25, the applicant could apply for and gain relief for justified requests. The FAA thoroughly examined the options available to establish airworthiness standards for an airplane of the size proposed for the commuter category and Notice No. 83–17 was the appropriate course to follow. Subsequent events to Amendment 23–10 in addition to the withdrawal of proposed Part 24—Light Transport Airworthiness Review Program, support the need for airworthiness standards for the commuter category airplane by size, weight, and expected operational use. The comments support the decision to amend Part 23, as stated in Notice No. 83–17.

As discussed in the preamble to this amendment, the scope and objective of this rulemaking action are to integrate into Part 23, the airworthiness standards considered necessary for the commuter category airplane. The intent is not to propose substantive changes to Part 23 or to the airworthiness standards being integrated into Part 23, except as discussed in the Notice. The FAA is concerned about bird strike damage to

windshields, as suggested by this commenter, and is of the opinion that further study is necessary before rulemaking action is taken on this additional suggestion for commuter category airplanes.

Section 21.17, Designation of applicable regulations. One commenter notes § 21.17(b) specifies the life of a type certificate application as 5 years for the transport category and 3 years for other categories. Current evidence indicates, according to this commenter, that 3 years is not sufficient for the approval of present Part 23 airplanes; accordingly, 3 years is contended to be inadequate for the commuter category. This commenter recommends that § 21.17(b) be changed to allow 5 years for all type certificate applications. The commenter submits no data or evidence that the current 3-year time limit for a type certificate application is inadequate. Therefore, the section is not amended under this rulemaking action.

Proposals 60 through 72—These proposals were to amend Part 21 to permit the type certification of commuter category airplanes in the same manner as other airplanes. No adverse comments were received to these proposals. Accordingly, the proposals are adopted as stated in the Notice. However, a discussion on the issuance of airworthiness certificates for normal and commuter category airplanes under the provisions of § 21.183 has been included in the discussion of proposal number 3.

Proposals 73 through 78—Two commenters address the issue of the proposed extension of Part 36, Appendix F, standards to the new commuter category airplane. One commenter suggests an applicant be permitted to show compliance with Part 36 by complying with either Appendix F, which contains the standards for propeller-driven small airplanes, or with Appendix C, which contains the standards for transport category large airplanes. The FAA does not concur with this suggestion for two reasons. First, data collected both by the United States and by the International Civil Aviation Organization (ICAO) shows that turbine-powered, propeller-driven airplanes below the 19,000 pound limit would have little difficulty meeting the Appendix F limit. Second, the Appendix C standard was developed primarily for larger airplanes including the large commercial turbojet-powered airplanes. Accordingly, Appendix C involves more precision testing and data correction. Since the Appendix C tests are considerably more expensive to the applicant, the FAA considers the suggestion to be impractical and not in the public interest.

Several comments on the noise issue were received as these issues relate to consistency of the proposed commuter category standards with both existing and future ICAO noise standards for propeller-driven airplanes. As the commenters point out, the United States and ICAO have different rulemaking cycles and, as a consequence, an inconsistency between the two standards will result when the proposals of Notice No. 83–17 are adopted. The United States and members of ICAO currently are developing an improved noise standard for small propeller-driven airplanes. When this cooperative effort is completed, the FAA will consider amending Part 36 to require compliance with these improved standards for appropriate categories of airplanes, including the commuter category.

Accordingly, the proposals to amend Part 36 are adopted as stated in the Notice.

Proposal 79—Notice No. 83–17 proposed to amend § 91.213, Second-in-command requirements, to allow operation of a commuter category airplane without a pilot who is designated as a second in command (SIC) if that airplane is type certificated for operations with one pilot.

Section 91.213 was first adopted on July 17, 1972 (37 FR 14758; July 25, 1972), in response to the safety concerns of the flying public. The majority of the public comments favored the SIC requirements of that section. The only exception to the two-pilot requirement of § 91.213 is a provision for existing SFAR 41 airplanes. The exception was adopted (47 FR 30946; July 15, 1982) to relieve Part 91 operators of SFAR 41 airplanes of a perceived economic burden. Notice No. 83–17 proposed to allow operation of certain commuter category airplanes without an SIC in essentially the same manner as an SFAR 41 airplane.

The FAA received 28 comments in response to the NPRM. Only one commenter specifically addresses the SIC requirements. That commenter opposes the adoption of the § 91.213 proposal. Another commenter later submitted a comment opposing those comments.

The Federal Aviation Act of 1958 charges the FAA with the duty of promoting safety of flight of civil aircraft and empowers the FAA to prescribe minimum standards as may be required in the interest of safety. In prescribing these standards, the FAA must make classifications of such standards, as appropriate, to maintain an equivalent level of safety for operations with varying levels of complexity and varying degrees of risk to the public. It necessarily follows that the more complex the operation and the greater the public exposure to risk, the higher the standards that are required.

In this connection, the FAA has had some safety concerns regarding the single-pilot operation of airplanes certificated for operation with up to 19 passengers as proposed in the NPRM. By its very nature, operation of an aircraft with a single pilot cannot provide a level of safety equivalent to operation by a crew of two or more.

There must be some point at which it is reasonable to require two pilots for all operations under Part 91. The current 12,500-pound weight demarcation between small and large airplanes was established more than 40 years ago and was based upon prevailing and anticipated future aircraft design considerations. Whether the demarcation of 12,500 pounds is arbitrary is not an issue in this rulemaking action. However, some line of demarcation must be drawn that will act as a buffer between the competing forces of safety and economics.

The FAA has determined, however, that this rulemaking action should not be delayed, nor is it within the scope of this action to address all flightcrew requirements for future operations under Part 91. To do so would place an undue economic hardship on aircraft manufacturers who have ongoing airplane certification programs. Nevertheless, the FAA must establish, in the interest of safety, a line of demarcation in this final rule for those commuter category airplanes that need two pilots for all operations regardless of weight or type of operations. Other issues involving flightcrew requirements for Part 91 operations will be handled by a separate rulemaking action.

Based upon a careful review of additional safety data and comments received during the regulatory process, the FAA will amend § 91.213(a)(1) to require two pilots for all operations of commuter category airplanes except commuter category airplanes that (a) have a passenger seating configuration, excluding pilot seats, of nine seats or less and (b) are type certificated for operations with one pilot. This line of demarcation will be consistent with that of Part 23 for certification of small airplanes and Part 135, which governs the operations of air taxi and commercial operators.

Based upon the comments to the NPRM and the safety concerns discussed herein, the FAA is requesting

further comments on the 9 seats or less demarcation for single-pilot operations under § 91.213(a)(3). The FAA will review all additional comments submitted. If those comments and further study by the FAA indicate a need to make further regulatory changes, the FAA will initiate the appropriate action prior to the effective date of these amendments. Comments submitted to Docket No. 23516 within 45 days after the publication of this rule in the **Federal Register** will be considered.

Proposal 80—One commenter does not agree with the FAA's decision to classify commuter category airplanes as small airplanes. This commenter contends that numerous safety related items, such as pilot type rating, second-in-command requirements, and flight instruments for the second in command would be required if the airplanes were considered large instead of small. This commenter states that §§ 61.58, 91.4, and all of Subpart D of Part 91 would automatically be applicable when the airplane is being operated in accordance with operating rules other than Part 135. In addition, this commenter states that these same airplanes should have to comply with § 135.175 which relates to airborne weather radar in lieu of § 135.173, Airborne thunderstorm detection equipment.

In response to the commenter's position on classifying the commuter category airplane as a small airplane, the FAA has reexamined proposed § 135.4 and has determined that designation of all sizes of commuter category airplanes as small is not appropriate for Part 135. Accordingly, proposed § 135.4 to identify a commuter category airplane as a small airplane for the purposes of Part 135 is not adopted. Commuter category airplanes have been included in §§135.169 and other sections of Part 135 as discussed in proposals 81 and 82 below.

The FAA agrees with the commenter that the airborne weather radar requirements of § 135.175 should apply to commuter category airplanes. While this requirement was not specifically proposed in Notice No. 83-17, the FAA will consider whether such an equipment requirement can appropriately be imposed based on the provisions of § 135.149(e).

Proposal 81—No adverse comments were received directly addressing this proposal. However, due to the nonadoption of § 135.4 as discussed above, § 135.169 has been revised by changing the wording of § 135.169(a) to permit the operation of a large commuter category airplane under Part 135 and exempt that category airplane from the cited requirements of Part 121. In some cases, these cited requirements of Part 121 would require the airplane design to include provisions that would be beyond the scope of Notice 83-17. As previously discussed, the FAA is considering additional cabin safety and occupant protection requirements for commuter category airplanes. The additional requirements of Part 121 will be considered as a part of that rulemaking project. To permit the operation of small commuter category airplanes under Part 135, § 135.169(b) is adopted as proposed. Because no commuter category airplane could have been operating under Part 135 prior to August 19, 1977, the proposed § 135.169(c)(2)(iii) is not adopted.

Proposal 82—Following the above identified changes to § 135.169, it was also necessary to review the proposal for § 135.399. As proposed, this section contained performance operating limitations for small nontransport category airplanes and commuter category airplanes, with the possibility of confusion occurring. To clearly identify the performance operating limitations for each of these two categories of airplanes, the proposal for § 135.399 has been revised by providing a new § 135.398 commuter category airplane performance operating limitations, which includes only those requirements proposed for commuter category airplanes. Performance operating limitations for small nontransport category airplanes remains unchanged in § 135.399. In addition, § 135.363 has been revised by adding a new paragraph (j) to require operators of commuter category airplanes to comply with § 135.398.

One commenter agrees with a requirement for consideration of the required takeoff flight path data. However, the proposal is keyed to ICAO Annex 8 and the commenter contends that the word "net" should be deleted from the proposed § 135.399(b). The FAA does not agree since the net takeoff flight path data is required to provide the necessary level of safety for operation of the commuter category airplane under the provisions of Parts 91 and 135. New § 135.398(b) is adopted as proposed for § 135.399(b).

Another commenter states that if the intended level of safety is to be achieved, a clear statement is needed regarding the performance operating rules which are applicable to commuter category airplanes. This commenter contends that this need is not met by § 135.399, either in its existing form or proposed form. The commenter states that since the scheduled performance data for commuter category airplanes is very similar to that of transport category airplanes, any proposed performance operating rules for commuter category airplanes modeled on existing provisions for transport category airplanes in Part 121 would seem reasonable. A proposed text is offered detailing performance operating rules for inclusion in Part 135. The FAA does not agree. The existing requirements, and the amendments adopted by this action, provide for an appropriate level of safety for operations under the provisions of Part 135 for commuter category airplanes and more detailed requirements are considered unnecessary at this time.

**Economic Impact**

A regulatory evaluation has been conducted and a copy is available in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

This final rule provides for the certification and operation of a new category airplane, the commuter category. To accomplish this end, there are approximately 82 specific changes to the FAR. With four exceptions, all changes are similar in substance to requirements previously applied to propeller-driven airplanes of a size approximating that of the commuter category. The four exceptions require: (1) Compliance with ICAO Annex 8, Part III, (2) consideration of obstacle clearance for takeoffs in Part 135 operations, (3) commuter category airplanes with more than 9 passenger seats to be operated in Part 91 operations with a second pilot, and (4) commuter category airplanes to be defined as large and small for Part 135 operations.

There are no additional costs associated with these amendments, since they do not amend the requirements applicable to any existing airplane category, but rather, provide an option for manufacturers to certificate propeller-driven airplanes of this size to requirements other than those applicable to transport category airplanes.

The provisions proposed in the previously withdrawn draft of Part 24 for light transport category airplanes, and the detailed airworthiness standards of Part 25, have not been applied to certification of new airplane designs of the commuter category size because the costs of compliance exceeded the benefits from future sales, purchase, and operation.

The benefits of having a commuter category certification standard in Part 23 are not readily quantifiable. However,

based upon a study conducted when the FAA was considering a new Part 24, the cost of certificating a hypothetical 30-seat airplane under Part 25 would have cost $8,000,000 more than certificating under SFAR No. 41, Appendix A of Part 135. The unit cost of production of the airplane certificated to the airworthiness standards of Part 25 would have been approximately $200,000 higher. Clearly certification under Part 25 would be considerably more expensive than under the requirements of Part 23 as amended by this final rule. A copy of the study is filed in Docket No. 18600 for examination by interested persons.

**Regulatory Flexibility Determination**

The FAA also determined that the rule changes will not have a significant economic impact on a substantial number of small entities. The FAA's criteria for a small airplane manufacturer is one employing less than 75 employees, and a substantial number is a number which is not less than 11 and which is more than one-third of the small entities subject to the proposed rules, and a significant impact is one having an annual cost of more than $14,258 per manufacturer.

A review of domestic general aviation manufacturing companies indicates that only six companies meet the size threshold of 75 employees or less. The amendments will therefore not affect a substantial number of small entities.

**Trade Impact**

The amendments to the FAR will improve trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the United States. In addition, the amendments have the beneficial impact of allowing a wider range of airplanes to be certified under Part 23.

**Conclusion**

For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves regulations which are not considered to be major under the procedures and criteria prescribed by Executive Order 12291, and (2) is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). I certifity that under the criteria of the Regulatory Flexibility Act, these final rules will not have a significant economic impact on a substantial number of small entities. In addition, these final rules will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

**List of Subjects**

*14 CFR Part 21*

Aircraft, Aviation safety, Air transportation, Safety.

*14 CFR Part 23*

Aircraft, Aviation safety, Safety, Air transportation, Tires.

*14 CFR Part 36*

Aircraft noise, Type certification.

*14 CFR Part 91*

Air carriers, Aviation Safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo, Smoking, Airports, Airworthiness directives and standards.

*14 CFR Part 135*

Air carriers, Aviation safety, Safety, Air transportation, Air taxi, Narcotics, Airworthiness, Cargo, Pilots, Airmen, Aircraft, Alcohol, Airports, Hours of work, Hazardous materials, Weapons, Baggage, Transportation, Mail, Helicopters, Smoking, Beverages, Air traffic control, Handicapped, Drugs, Airspace, Chemicals, Airplanes.

**Adoption of the Amendments**

Accordingly, Parts 21, 23, 36, 91, and 135 of the Federal Aviation Regulations (14 CFR Parts 21, 23, 36, 91, and 135) are amended, as follows:

1. By amending Part 23 by revising the title to read as follows:

## PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

2. The authority citation for Part 23 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430, and 1502; and 49 U.S.C. 106(g) (Revised, Public L. 97-449, January 12, 1983).

3. By amending § 23.1 by revising paragraph (a) to read as follows:

**§ 23.1 Applicability.**

(a) This part prescribes airworthiness standards for the issue of type certificates, and changes to those certificates, for airplanes in the normal, utility, acrobatic, and commuter categories.

* * * * *

4. By amending § 23.3 by revising paragraphs (a) introductory text, (b) introductory text, and (c); by revising and redesignating paragraph (d) as (e), and by adding a new paragraph (d) to read as follows:

**§ 23.3 Airplane categories.**

(a) The normal category is limited to airplanes that have a seating configuration, excluding pilot seats, of nine or less, a maximum certificate takeoff weight of 12,500 pounds or less, and intended for nonacrobatic operation. Nonacrobatic operation includes:

* * * * *

(b) The utility category is limited to airplanes that have a seating configuration, excluding pilot seats, of nine or less, a maximum certificated takeoff weight of 12,500 pounds or less, and intended for limited acrobatic operation. Airplanes certificated in the utility category may be used in any of the operations covered under paragraph (a) of this section and in limited acrobatic operations. Limited acrobatic operation includes:

* * * * *

(c) The acrobatic category is limited to airplanes that have a seating configuration, excluding pilot seats, of nine or less, a maximum certificated takeoff weight of 12,500 pounds or less, and intended for use without restrictions, other than those shown to be necessary as a result of required flight tests.

(d) The communter category is limited to propeller-driven, multiengine airplanes that have a seating configuration excluding pilot seats, of 19 or less, and a maximum certificated takeoff weight of 19,000 pounds or less, intended for nonacrobatic operation as described in paragraph (a) of this section.

(e) Airplanes may be type certificated in more than one category of this part if the requirements of each requested category are met.

5. By amending § 23.25(a)(2) by inserting the words "and commuter" after the word "normal"; and by revising paragraph (a) introductory text to read as follows:

**§ 23.25 Weight limits.**

(a) *Maximum weight.* The maximum weight is the highest weight at which compliance with each applicable requirement of this Part (other than those complied with at the design landing weight) is shown. In addition, for commuter category airplanes, the applicant must establish a maximum zero fuel weight. The maximum weight must be established so that it is—

* * * * *

6. By amending § 23.45 by revising paragraph (a) and by adding a new paragraph (f) to read as follows:

**§ 23.45 General.**

(a) Unless otherwise prescribed, the performance requirements of this subpart must be met for still air; and

(1) Standard atmospheric conditions for normal, utility, and acrobatic category airplanes; or

(2) Ambient atmospheric conditions for commuter category airplanes.

* * * * *

(f) For commuter category airplanes, the following also apply:

(1) Unless otherwise prescribed, the applicant must select the takeoff, en route, approach, and landing configurations for the airplane;

(2) The airplane configuration may vary with weight, altitude, and temperature, to the extent they are compatible with the operating procedures required by paragraph (f)(3) of this section;

(3) Unless otherwise prescribed, in determining the critical-engine-inoperative takeoff performance, takeoff flight path, the accelerate-stop distance, takeoff distance, and landing distance, changes in the airplane's configuration, speed, power, and thrust must be made in accordance with procedures established by the applicant for operation in service;

(4) Procedures for the execution of missed approaches and balked landings associated with the conditions prescribed in §§ 23.67(e)(3) and 23.77(c) must be established; and

(5) The procedures established under paragraphs (f)(3) and (f)(4) of this section must—

(i) Be able to be consistently executed by a crew of average skill;

(ii) Use methods or devices that are safe and reliable; and

(iii) Include allowance for any reasonably expected time delays in the execution of the procedures.

7. By amending § 23.51 by removing paragraphs (b) and (c); by redesignating paragraphs (d) and (e) as (b) and (c) respectively; and by adding a new paragraph (d) to read as follows:

**§ 23.51 Takeoff.**

* * * * *

(d) For commuter category airplanes, takeoff performance and data as required by §§ 23.53 through 23.59 must be determined and included in the Airplane Flight Manual—

(1) For each weight, altitude, and ambient temperature within the operational limits selected by the applicant;

(2) For the selected configuration for takeoff;

(3) For the most unfavorable center of gravity position;

(4) With the operating engine within approved operating limitations;

(5) On a smooth, dry, hard surface runway; and

(6) Corrected for the following operational correction factors:

(i) Not more than 50 percent of nominal wind components along the takeoff path opposite to the direction of takeoff and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff; and

(ii) Effective runway gradients.

8. By adding a new § 23.53 to read as follows:

**§ 23.53 Takeoff speeds.**

(a) For multiengine airplanes, the lift-off speed, $V_{LOF}$, may not be less than $V_{MC}$ determined in accordance with § 23.149.

(b) Each normal, utility, and acrobatic category airplane, upon reaching a height of 50 feet above the takeoff surface level, must have reached a speed of not less than the following:

(1) For multiengine airplanes, the higher of—

(i) 1.1 $V_{MC}$; or

(ii) 1.3 $V_{S1}$, or any lesser speed, not less than $V_X$ plus 4 knots, that is shown to be safe under all conditions, including turbulence and complete engine failure.

(2) For single engine airplanes—

(i) 1.3 $V_{S1}$; or

(ii) Any lesser speed, not less than $V_X$ plus 4 knots, that is shown to be safer under all conditions, including turbulence and complete engine failure.

(c) For commuter category airplanes, the following apply:

(1) The takeoff decision speed, $V_1$, is the calibrated airspeed on the ground at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The takeoff decision speed, $V_1$, must be selected by the applicant but may not be less than the greater of the following:

(i) 1.10 $V_{S1}$;

(ii) 1.10 $V_{MC}$ established in accordance with § 23.149;

(iii) A speed at which the airplane can be rotated for takeoff and shown to be adequate to safely continue the takeoff, using normal piloting skill, when the critical engine is suddenly made inoperative; or

(iv) $V_{EF}$ plus the speed gained with the critcial engine inoperative during the time interval between the instant that the critical engine is failed and the instant at which the pilot recognizes and reacts to the engine failure as indicated by the pilot's application of the first retarding means during the accelerate-stop determination of § 23.55.

(2) The takeoff safety speed, $V_2$, in terms of calibrated airspeed, must be selected by the applicant so as to allow the gradient of climb required in § 23.67 but must not be less than $V_1$ or less than $1.2VV_{S1}$.

(3) The critical engine failure speed, $V_{EF}$, is the calibrated airspeed at which the critical engine is assumed to fail. $V_{EF}$ must be selected by the applicant but not less than $V_{MC}$ determined in accordance with § 23.149.

(4) The rotation speed, $V_R$ in terms of calibrated airspeed, must be selected by the applicant and may not be less than the greater of the following:

(i) $V_1$; or

(ii) The speed determined in accordance with § 23.57(c) that allows attaining the initial climb out speed, $V_2$, before reaching a height of 35 feet above the takeoff surface.

(5) For any given set of conditions, such as weight, altitude, configuration, and temperature, a single value of $V_R$ must be used to show compliance with both the one-engine-inoperative takeoff and all-engines-operating takeoff requirements:

(i) One-engine-inoperative takeoff determined in accordance with § 23.57; and

(ii) All-engines-operating takeoff determined in accordance with § 23.59.

(6) The one-engine-inoperative takeoff distance, using a normal rotation rate at a speed of 5 knots less than $V_R$ established in accordance with paragraphs (c)(4) and (5) of this section, must be shown not to exceed the corresponding one-engine-inoperative takeoff distance determined in accordance with §§ 23.57 and 23.59 using the established $V_V$. The take off distance determined in accordance with § 23.59 and the takeoff must be safely continued from the point at which the airplane is 35 feet above the takeoff surface at a speed not less than 5 knots less than the established $V_2$ speed.

(7) The applicant must show, with all engines operating, that marked increases in the scheduled takeoff distances determined in accordance with § 23.59 do not result from over-rotation of the airplane and out-of-trim conditions.

9. By adding a new § 23.55 to read as follows:

**§ 23.55 Accelerate-stop distance.**

For each commuter category airplane, the accelerate-stop distance must be determined as follows:

(a) The accelerate-stop distance is the sum of the distances necessary to—

(1) Accelerate the airplane from a standing start to $V_1$; and

(2) Come to a full stop from the point at which $V_1$ is reached assuming that in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed $V_1$.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means is available with the critical engine inoperative and if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

10. By adding a new § 23.57 to read as follows:

**§ 23.57 Takeoff path.**

For each commuter category airplane, the takeoff path is as follows:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface or at which the transition from the takeoff to the en route configuration is completed, whichever point is higher; and

(1) The takeoff path must be based on the procedures prescribed in § 23.45;

(2) The airplane must be accelerated on the ground to $V_{EF}$ at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching $V_{EF}$, the airplane must be accelerated to $V_2$.

(b) During the acceleration to speed $V_2$, the nose gear may be raised off the ground at a speed not less than $V_R$. However, landing gear retraction may not be initiated until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section—

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach $V_2$ before it is 35 feet above the takeoff surface, and must continue at a speed as close as practical to, but not less than $V_2$, until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than—

(i) 1.2 percent for two-engine airplanes;

(ii) 1.5 percent for three-engine airplanes;

(iii) 1.7 percent for four-engine airplanes; and

(4) Except for gear retraction and automatic propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method—

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, power or thrust, and speed;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect;

(4) The takeoff path data must be checked by continuous demonstrated takeoffs up to the point at which the airplane is out of ground effect and its speed is stabilized to ensure that the path is conservative relative to the continuous path; and

(5) The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.

11. By adding a new § 23.59 to read as follows:

**§ 23.59 Takeoff distance and takeoff run.**

For each commuter category airplane—

(a) Takeoff distance is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface as determined under § 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with § 23.57.

(b) If the takeoff distance includes a clearway, the takeoff run is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which $V_{LOF}$ is reached and the point at which the airplane is 35 feet above the takeoff surface as determined under § 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which $V_{LOF}$ is reached and the point at which the airplane is 35 feet above the takeoff surface determined by a procedure consistent with § 23.57.

12. By adding a new § 23.61 to read as follows:

**§ 23.61 Takeoff flight path.**

For each commuter category airplane, the takeoff flight path must be determined as follows:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with § 23.59.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths, as determined in accordance with § 23.57 and with paragraph (a) of this section, reduced at each point by a gradient of climb equal to—

(1) 0.8 percent for two-engine airplanes;

(2) 0.9 percent for three-engine airplanes; and

(3) 1.0 percent for four-engine airplanes.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

13. By amending § 23.65 by adding a new paragraph (d) to read as follows:

**§ 23.65 Climb: All engines operating.**

* * * * *

(d) In addition for commuter category airplanes, performance data must be determined for variations in weight, altitude, and temperatures at the most critical center of gravity for which approval is requested.

14. By amending § 23.67 by inserting the words "normal, utility, and acrobatic category" before the word "reciprocating" in both paragraphs (a) and (b) and before the word "turbine" in paragraph (c); and by adding a new paragraph (e) to read as follows:

**§ 23.67 Climb: One engine inoperative.**

* * * * *

(e) For commuter category airplanes, the following apply:

(1) *Takeoff climb:* The maximum weight at which the airplane meets the minimum climb performance specified in paragraphs (i) and (ii) must be determined for each altitude and ambient temperature within the operating limitations established for the airplane, out of ground effect in free air, with the airplane in the takeoff configuration, with the most critical center of gravity, the critical engine

inoperative, the remaining engines at the maximum takeoff power or thrust, and the propeller of the inoperative engine windmilling with the propeller controls in the normal position, except that, if an approved automatic propeller feathering system is installed, the propeller may be in the feathered position:

(i) *Takeoff, landing gear extended.* The minimum steady gradient of climb between the lift-off speed, $V_{LOF}$, and until the landing gear is retracted must be measurably positive for two-engine airplanes, not less than 0.3 percent for three-engine airplanes, or 0.5 percent for four-engine airplanes at all points along the flight path; and

(ii) *Takeoff, landing gear retracted.* The minimum steady gradient of climb must not be less than 2 percent for two-engine airplanes, 2.3 percent for three-engine airplanes, and 2.6 percent for four-engine airplanes at the speed $V_2$, until the airplane is 400 feet above the takeoff surface. For airplanes with fixed landing gear, this requirement must be met with the landing gear extended.

(2) *En route climb:* The maximum weight must be determined for each altitude and ambient temperature within the operational limits established for the airplane, at which the steady gradient of climb is not less than 1.2 percent for two-engine airplanes, 1.5 percent for three-engine airplanes, and 1.7 percent for four-engine airplanes at an altitude of 1,500 feet above the takeoff surface, with the airplane in the en route configuration, the critical engine inoperative, the remaining engine at the maximum continuous power or thrust, and the most unfavorable center of gravity.

(3) *Approach:* In the approach configuration corresponding to the normal all-engines-operating procedure in which $V_{S4}$ for this configuration does not exceed 110 percent of the $V_{S1}$ for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent for two-engine airplanes, 2.4 percent for three-engine airplanes, and 2.7 percent for four-engine airplanes, with—

(i) The critical engine inoperative and the remaining engines at the available takeoff power or thrust;

(ii) The maximum landing weight; and

(iii) A climb speed established in connection with the normal landing procedures but not exceeding 1.5 $V_{S1}$.

15. By amending § 23.75 by adding a new paragraph (g) to read as follows:

**§ 23.75 Landing.**

* * * * *

(g) In addition, for commuter category airplanes, the following apply:

(1) The landing distance must be determined for standard temperatures at each weight, altitude, and wind condition within the operational limits established by the applicant;

(2) A steady gliding approach, or a steady approach at a gradient of descent not greater than 5.2 percent (3°), at a calibrated airspeed not less than $1.3V_{S1}$ must be maintained down to the 50-foot height; and

(3) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

16. By amending § 23.77 by inserting the words "normal, utility, and acrobatic category" before the word "airplane"; and by adding an "s" to the word "airplane" in paragraph (a); by inserting the words "normal, utility, and acrobatic category" before the word "turbine"; by adding an "s" to the word "airplane" in the first part of the sentence in paragraph (b); and by adding a new paragraph (c) to read as follows:

**§ 23.77 Balked landing.**

* * * * *

(c) For each commuter category airplane, with all engines operating, the maximum weight must be determined with the airplane in the landing configuration for each altitude and ambient temperature within the operational limits established for the airplane, with the most unfavorable center of gravity and out-of-ground effect in free air, at which the steady gradient of climb will not be less than 3.3 percent with—

(1) The engines at the power or thrust that is available 8 seconds after initiation of movement of the power or thrust controls from the minimum flight-idle position to the takeoff position.

(2) A climb speed not greater than the approach speed established under § 23.75 and not less than the greater of $1.05\ V_{MC}$ or $1.10V_{S1}$.

17. By amending § 23.161 by revising paragraphs (b), (c) introductory test, and (c)(3) to read as follows:

**§ 23.161 Trim.**

* * * * *

(b) *Lateral and directional trim.* The airplane must maintain lateral and directional trim in level flight with the landing gear and wing flaps retracted as follows:

(1) For normal, utility, and acrobatic category airplanes, at a speed of $0.9V_H$ or $V_C$, whichever is lower; and

(2) For commuter category airplanes, at a speed of $V_H$ or $V_{MO}/M_{MO}$, whichever is lower.

(c) *Longitudinal trim.* The airplane must maintain longitudinal trim under each of the following conditions, except that it need not maintain trim at a speed greater than $V_{MO}/M_{MO}$:

* * * * *

(3) Level flight at any speed with the landing gear and wing flaps retracted as follows:

(i) For normal, utility, and acrobatic category airplanes, at any speed from $0.9V_H$ to either $V_X$ or $1.4V_{S1}$; and

(ii) For commuter category airplanes, at a speed of $V_H$ or $V_{MO}/M_{MO}$, whichever is lower, to either $V_X$ or $1.4V_{S1}$.

* * * * *

18. By amending § 23.173 by revising paragraph (b) to read as follows:

**§ 23.173 Static longitudinal stability.**

* * * * *

(b) The airspeed must return to within the tolerances specified for applicable categories of airplanes when the control force is slowly released at any speed within the speed range specified in paragraph (a) of this section. The applicable tolerances are—

(1) The airspeed must return to within plus or minus 10 percent of the original trim airspeed; and

(2) For commuter category airplanes, the airspeed must return to within plus or minus 7.5 percent of the original trim airspeed for the cruising condition specified in § 23.175(b).

* * * * *

19. By amending § 23.175 by revising paragraph (b)(2) introductory text to read as follows:

**§ 23.175 Demonstration of static longitudinal stability.**

* * * * *

(b) *Cruise—Landing gear retracted (or fixed gear).*

* * * * *

(2) *High speed cruise.* The stick force curve must have a stable slope at all speeds within a range that is the greater of 15 percent of the trim speed plus the resulting free return speed range or 40 knots plus the resulting free return speed range for normal, utility, and acrobatic category airplanes, above and below the trim speed. For commuter category airplanes, the stick force curve must have a stable slope for a speed range of 50 knots from the trim speed, except that the speeds need not exceed $V_{FC}/M_{FC}$ or be less than $1.4\ V_{S1}$ and this speed range is considered to begin at the outer extremes of the friction band with a stick force not to exceed 50 pounds. In

addition, for commuter category airplanes, $V_{FC}/M_{FC}$ may not be less than a speed midway between $V_{MO}/M_{MO}$ and $V_{DF}/M_{DF}$, except that, for altitudes where Mach number is the limiting factor, $M_{FC}$ need not exceed the Mach number at which effective speed warning occurs. These requirements for all categories of airplane must be met with—

* * * * *

20. By amending § 23.333 by inserting the words "and commuter" after the word "normal" in paragraph (b)(3); by adding a new paragraph (c)(1)(iii); and by revising the diagram in paragraph (d) to add additional commuter category gust parameters as follows:

**§ 23.333 Flight envelope.**

* * * * *

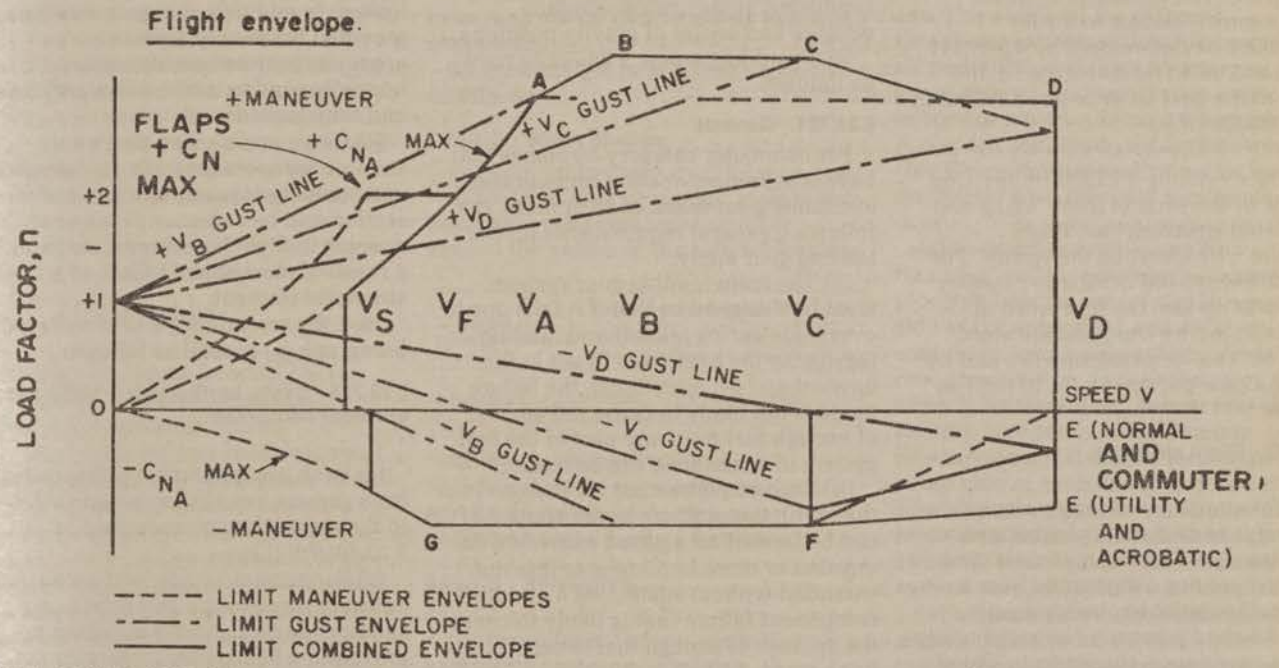
(c) *Gust envelope.*

(1) * * *

(iii) In addition, for commuter category airplanes, positive (up) and negative (down) rough air gusts of 66 f.p.s. at $V_B$ must be considered at altitudes between sea level and 20,000 feet. The gust velocity may be reduced linearly from 66 f.p.s. at 20,000 feet to 38 f.p.s. at 50,000 feet.

* * * * *

(d) *Flight envelope.*




NOTE: POINT G NEED NOT BE INVESTIGATED WHEN THE SUPPLEMENTARY CONDITION SPECIFIED IN § 23.369 IS INVESTIGATED

21. By amending § 23.335 by revising paragraphs (a)(1)(i) and (b)(2)(i); and by adding a new paragraph (d) to read as follows:

**§ 23.335 Design airspeeds.**

* * * * *

(a) * * *

(1) * * *

(i) 33 W/S (for normal, utility, and commuter category airplanes); and

* * * * *

(b) * * *

(2) * * *

(i) 1.40 $V_c$ *min* (for normal and commuter category airplanes);

* * * * *

(d) *Design speed for maximum gust intensity, $V_B$.* For $V_B$, the following apply:

(1) $V_B$ may not be less than the speed determined by the intersection of the line representing the maximum positive lift $C_{n\ max}$ and the line representing the rough air gust velocity on the gust $V\text{-}n$ diagram, or $V(n_g)\ V_{S1}$, whichever is less, where:

(i) $n_g$ the positive airplane gust load factor due to gust, at speed $V_C$ (in accordance with § 23.341), and at the particular weight under consideration; and

(ii) $V_{S1}$ is the stalling speed with the flaps retracted at the particular weight under consideration.

(2) $V_B$ need not be greater than $V_C$.

**§ 23.337 [Amended]**

22. By amending § 23.337, by inserting the words "and commuter" before the word "category" in paragraph (a)(1); and by removing the word "and" and by inserting ", and commuter" before the word "categories" in paragraph (b)(1).

23. By amending § 23.349 by revising paragraph (a)(2) to read as follows:

**§ 23.349 Rolling conditions.**

* * * * *

(a) * * *

(2) For normal, utility, and commuter categories, in Condition A, assume that 100 percent of the semispan wing airload acts on one side of the airplane, and 70 percent of this load acts on the other side. For airplanes of more than 1,000 pounds design weight, the latter percentage may be increased linearly with weight up through 75 percent at 12,500 pounds to the maximum gross weight of the airplane.

* * * * *

**§ 23.397 [Amended]**

24. By amending the table in § 23.397 (b) by revising Footnote 1 by removing the period at the end of the sentence and inserting the phrase "and for commuter category airplanes, the specified values must be increased linearly with weight to 1.35 times the specified values at a design weight of 19,000 pounds."

25. By amending § 23.443 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively; and by adding a new paragraph (b) to read as follows:

**§ 23.443 Gust loads.**

* * * * *

(b) In addition, for commuter category airplanes, the airplane is assumed to encounter derived gusts normal to the plane of symmetry while in unaccelerated flight at $V_B$, $V_C$ $V_D$, and $V_F$. The derived gusts and airplane speeds corresponding to these conditions, as determined by §§ 23.341 and 23.345, must be investigated. the shape of the gust must be as specified in § 23.333(c)(2)(i).

* * * * *

26. By amending § 23.572 by revising the title of the section from "Wing and associated structure" to "Flight structure"; by inserting the words "For normal, utility, and acrobatic category airplanes," before the first word in paragraph (a); by changing the word "The" to "the" in paragraph (a); and by adding a new paragraph (b) to read as follows:

**§ 23.572 Flight structure.**

* * * * *

(b) For commuter category airplanes, unless it is shown that the structure, operating stress levels, materials, and expected use are comparable from a fatigue standpoint to similar design which has had a substantial satisfactory service experience, the strength, detail design, and the fabrication of those parts of the wing, wing carrythrough, vertical fin, horizontal stabilizer, and attaching structure whose failure would be catastrophic must be evaluated under either—

(1) A fatigue strength investigation, in which the structure is shown by analysis, tests, or both, to be able to withstand the repeated loads of variable magnitude expected in service. Analysis alone is acceptable only when it is conservative and applied to simple structures; or

(2) A fail-safe strength investigation in which analysis, tests, or both, show that catastrophic failure of the structure is not probable after fatigue failure, or obvious partial failure, of a principal structural element and that the remaining structure is able to withstand a static ultimate load factor of 75 percent of the critical limit load at $V_C$. These loads must be multiplied by a factor of 1.15 unless the dynamic effects of failure under static load are otherwise considered.

27. By amending § 23.677 by adding a new paragraph (d) to read as follows:

**§ 23.677 Trim systems.**

* * * * *

(d) In addition, for commuter category airplanes, a demonstration must show that the airplane is safely controllable and that a pilot can perform all the maneuvers and operations necessary to effect a safe landing following any probable electric trim tab runaway which might be reasonably expected in service allowing for appropriate time delay after pilot recognition of the runaway. This demonstration must be conducted at the critical airplane weights and center of gravity positions.

28. By adding a new § 23.721 to read as follows:

**§ 23.721 General.**

For commuter category airplanes that have a passenger seating configuration, excluding pilot seats, of 10 or more, the following general requirements for the landing gear apply:

(a) The main landing-gear system must be designed so that if it fails due to overloads during takeoff and landing (assuming the overloads to act in the upward and aft directions), the failure mode is not likely to cause the spillage of enough fuel from any part of the fuel system to consitute a fire hazard.

(b) Each airplane must be designed so that, with the airplane under control, it can be landed on a paved runway with any one or more landing-gear legs not extended without sustaining a structural component failure that is likely to cause the spillage of enough fuel to consitute a fire hazard.

(c) Compliance with the provisions of this section may be shown by analysis or tests, or both.

29. By amending § 23.783 by adding a new paragraph (c) to read as follows:

**§ 23.783 Doors.**

* * * * *

(c) In addition, for commuter category airplanes, the following requirements apply:

(1) A means must be provided to lock and safeguard each external door against opening in flight (either inadvertently by persons, cargo, or as a result of mechanical failure or failure of a single structural element). Each external door must be openable from both the inside and the outside, even though persons may be crowded against the door on the inside of the airplane. Inward-opening doors may be used if a means is provided to prevent occupants from crowding against the door to an extent that would interfere with the opening of the door. The means of opening must be simple and obvious and must be arranged and marked inside and outside so that it can be readily located and operated, even in darkness. Auxiliary locking devices may be used;

(2) Each external door must be reasonably free from jamming as a result of fuselage deformation in a minor crash;

(3) A means must be provided for direct visual inspection of the locking mechanism by crewmembers to determine whether external doors, for which the initial opening movement is outward, including passenger, crew, service, and cargo doors, are fully locked. In addition, a means must be provided to visually signal to appropriate crewmembers when normally used external doors are closed and fully locked; and

(4) Cargo and service doors not suitable for use as exits in an emergency need only meet paragraph (c)(3) of this section and be safeguarded against opening in flight by persons, cargo, or as a result of mechanical failure of a single structural element.

29–1. By amending § 23.785 by revising paragraph (g) to read as follows:

**§ 23.785 Seats, berths, safety belts, and shoulder harnesses.**

* * * * *

(g) Each occupant must be protected from serious head injury when subjected to the inertia forces prescribed in § 23.561(b)(2) by—

(1) For normal, utility, and acrobatic category airplanes, a safety belt and shoulder harness that is designed to prevent the head from contacting any injurious object for each forward- and aft-facing seat. For other seat orientations, the seat and restraint means must be designed to provide a level of occupant protection equivalent to that provided for forward- and aft-facing seats with safety belts and shoulder harnesses installed; or

(2) For commuter category airplanes, a safety belt and shoulder harness that is designed to prevent the head from contacting any injurious object for each front seat; and a safety belt, or a safety belt and shoulder harness, for each seat other than a front seat.

* * * * *

30. By amending § 23.787 by adding a new paragraph (g) to read as follows:

**§ 23.787 Cargo compartments.**

* * * * *

(g) In addition, for commuter category airplanes, the following apply:

(1) A means must be provided to protect occupants from injury by the contents of any cargo or baggage compartment located aft of occupants when the ultimate forward inertia force is 9 g.

(2) Baggage compartments must be designed to meet the requirements for cargo compartments in paragraphs (a), (b), and (f) of this section.

31. By adding a new § 23.803 to read as follows:

**§ 23.803 Emergency evacuation.**

For commuter category airplanes, an evacuation demonstration must be conducted utilizing the maximum number of occupants for which certification is desired. The demonstration must be conducted under simulated night conditions using only the emergency exits on the most critical side of the airplane. The participants must be representative of average airline passengers with no prior practice or rehearsal for the demonstration. Evacuation must be completed within 90 seconds.

32. By amending § 23.807 by adding a new paragraph (d) to read as follows:

**§ 23.807 Emergency exits.**

* * * * *

(d) *Doors and exits.* In addition, for commuter category airplanes the following requirements apply:

(1) The passenger entrance door must qualify as a floor level emergency exit. If an integral stair is installed at such a passenger entry door, the stair must be designed so that when subjected to the inertia forces specified in § 23.561, and following the collapse of one or more legs of the landing gear, it will not interfere to an extent that will reduce the effectiveness of emergency egress through the passenger entry door. Each additional required emergency exit, except floor level exits, must be located over the wing or must be provided with acceptable means to assist the occupants in descending to the ground. In addition to the passenger entrance door—

(i) For a total passenger seating capacity of 15 or less, an emergency exit as defined in paragraph (b) of this section is required on each side of the cabin; and

(ii) For a total passenger seating capacity of 16 through 19, three emergency exits, as defined in paragraph (b) of this section, are required with one on the same side as the door and two on the side opposite the door.

(2) A means must be provided to lock each emergency exit and to safeguard against its opening in flight, either inadvertently by persons or as a result of mechanical failure. In addition, a means for direct visual inspection of the locking mechanism must be provided to determine that each emergency exit for which the initial opening movement is outward is fully locked.

(3) Each emergency exit must be marked with the word "Exit" by a sign which has white letters 1 inch high on a red background 2 inches high, be self-illuminated or independently, internally-electrically illuminated, and have a minimum brightness of at least 160 microlamberts. The colors may be reversed if the passenger compartment illumination is essentially the same.

(4) Access to window-type emergency exits may not be obstructed by seats or seat backs.

33. By adding a new § 23.815 to read as follows:

**§ 23.815 Width of aisle.**

For commuter category airplanes, the width of the main passenger aisle at any point between seats must equal or exceed the values in the following table:

| Number of passenger seats | Minimum main passenger aisle width | |
|---|---|---|
| | Less than 25 inches from floor | 25 inches and more from floor |
| 10 through 19 | 9 inches | 15 inches. |

34. By amending § 23.831 by redesignating the present paragraph as paragraph (a); and adding a new paragraph (b) to read as follows:

**§ 23.831 Ventilation.**

* * * * *

(b) In addition, for pressurized communter category airplanes, the ventilating air in the flightcrew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of reasonably probable failures or malfunctioning of the ventilating, heating, pressurization, or other systems and equipment. If accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, smoke evacuation must be readily accomplished starting with full pressurization and without depressurizing beyond safe limits.

35. By adding a new § 23.851 to read as follows:

**§ 23.851 Fire Extinguishers.**

For the commuter category airplanes, the following apply:

(a) At least one hand fire extinguisher must be located conveniently in the pilot compartment; and

(b) At least one hand fire extinguisher must be located conveniently in the passenger compartment.

36. By amending § 23.853 by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively; and by adding a new paragraph (d) to read as follows:

**§ 23.853 Compartment interiors.**

* * * * *

(d) In addition, for commuter category airplanes the following requirements apply:

(1) Each disposal receptacle for towels, paper, or waste must be fully enclosed and constructed of at least fire resistant materials and must contain fires likely to occur in it under normal use. The ability of the disposal receptacle to contain those fires under all probable conditions of wear, misalignment, and ventilation expected in service must be demonstrated by test. A placard containing the legible words "No Cigarette Disposal" must be located on or near each disposal receptacle door.

(2) Lavatories must have "No Smoking" or "No Smoking in Lavatory" placards located conspicuously on each side of the entry door and self-contained, removable ashtrays located conspicuously on or near the entry side of each lavatory door, except that one ashtray may serve more than one lavatory door if it can be seen from the cabin side of each lavatory door served. The placards must have red letters at least ½ inch high on a white background at least 1 inch high (a "No Smoking" symbol may be included on the placard).

(3) Materials (including finishes or decorative surfaces applied to the materials) used in each compartment occupied by the crew or passengers must meet the following test criteria as applicable:

(i) Interior ceiling panels, interior wall panels, partitions, galley structure, large cabinet walls, structural flooring, and materials used in the construction of stowage compartments (other than underseat stowage compartments and compartments for stowing small items such as magazines and maps) must be self-extinguishing when tested vertically in accordance with the applicable portions of Appendix F of this Part or by other equivalent methods. The average burn length may not exceed 6 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 3 seconds after falling.

(ii) Floor covering, textiles (including draperies and upholstery), seat cushions, padding, decorative and nondecorative coated fabrics, leather, trays and galley furnishings, electrical conduit, thermal and acoustical insulation and insulation covering, air

ducting, joint and edge covering, cargo compartment liners, insulation blankets, cargo covers and transparencies, molded and thermoformed parts, air ducting joints, and trim strips (decorative and chafing), that are constructed of materials not covered in paragraph (d)(3)(iv) of this section must be self extinguishing when tested vertically in accordance with the applicable portions of Appendix F of this Part or other approved equivalent methods. The average burn length may not exceed 8 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 5 seconds after falling.

(iii) Motion picture film must be safety film meeting the Standard Specifications for Safety Photographic Film PH1.25 (available from the American National Standards Institute, 1430 Broadway, New York, N.Y. 10018) or an FAA approved equivalent. If the film travels through ducts, the ducts must meet the requirements of paragraph (d)(3)(ii) of this section.

(iv) Acrylic windows and signs, parts constructed in whole or in part of elastomeric materials, edge-lighted instrument assemblies consisting of two or more instruments in a common housing, seatbelts, shoulder harnesses, and cargo and baggage tiedown equipment, including containers, bins, pallets, etc., used in passenger or crew compartments, may not have an average burn rate greater than 2.5 inches per minute when tested horizontally in accordance with the applicable portions of Appendix F of this Part or by other approved equivalent methods.

(v) Except for electrical wire cable insulation, and for small parts (such as knobs, handles, rollers, fasteners, clips, grommets, rub strips, pulleys, and small electrical parts) that the Administrator finds would not contribute significantly to the propagation of a fire, materials in items not specified in (d)(3) (i), (ii), (iii), or (iv) of this section may not have a burn rate greater than 4.0 inches per minute when tested horizontally in accordance with the applicable portions of Appendix F of this Part or by other approved equivalent methods.

* * * * *

37. By amending § 23.901 by adding a new paragraph (b)(3) to read as follows:

**§ 23.901 Installation.**

* * * * *

(b) * * *

(3) In addition, for turbopropeller-powered commuter category airplanes, the engine installation must not result in vibration characteristics exceeding those established during the type certification of the engine.

* * * * *

38. By amending § 23.903 by redesignating the text of paragraph (d) as paragraph (d)(1); by adding a new paragraph (d)(2); and by revising paragraph (e)(2) to read as follows:

**§ 23.903 Engines.**

* * * *

(d) *Starting and stopping (piston engine).*

(1) * * *

(2) In addition, for commuter category airplanes, the following apply:

(i) Each component of the stopping system on the engine side of the firewall that might be exposed to fire must be at least fire resistant.

(ii) If hydraulic propeller feathering systems are used for this purpose, the feathering lines must be at least fire resistant under the operating conditions that may be expected to exist during feathering.

(e) *Starting and stopping (turbine engine).*

* * * * *

(2) A means must be provided for stopping combustion and rotation of any engine. All those components provided for compliance with this requirement, which are within any engine compartment on the engine side of the firewall, must be fire resistant. In addition, for commuter category airplanes, each component of the restarting system on the engine side of the firewall and those components that might be exposed to fire must be at least fire resistant. If hydraulic propeller feathering systems are used for this purpose, the feathering lines must be at least fire resistant under the operating conditions that may be expected to exist during feathering.

* * * * *

39. By amending § 23.933 by adding a new paragraph (d) to read as follows:

**§ 23.933 Reversing Systems.**

* * * * *

(d) For turbopropeller-powered, commuter category airplanes, the requirements of paragraphs (b) and (c) of this section apply. Compliance with this section must be shown by failure analysis, testing, or both, for propeller systems that allow the propeller blades to move from the flight low-pitch position to a position that is substantially less than that at the normal flight, low-pitch stop position. The analysis may include, or be supported by, the analysis made to show compliance for the type certification of the propeller and associated installation components. Credit will be given for pertinent analysis and testing completed by the engine and propeller manufacturers.

40. By amending § 23.963 by adding a new paragraph (f) to read as follows:

**§ 23.963 Fuel Tanks: general.**

* * * * *

(f) For commuter category airplanes, fuel tanks within the fuselage contour must be able to resist rupture and to retain fuel under the inertia forces prescribed for the emergency landing conditions in § 23.561. In addition, these tanks must be in a protected position so that exposure of the tanks to scraping action with the ground is unlikely.

41. By amending § 23.997 by adding a new paragraph (e) to read as follows:

**§ 23.997 Fuel strainer or filter.**

* * * * *

(e) In addition, for commuter category airplanes, unless means are provided in the fuel system to prevent the accumulation of ice on the filter, a means must be provided to automatically maintain the fuel flow if ice clogging of the filter occurs.

42. By amending § 23.1163 by adding a new paragraph (d) to read as follows:

**§ 23.1163 Powerplant accessories.**

* * * * *

(d) In addition, for commuter category airplanes, if the continued rotation of any accessory remotely driven by the engine is hazardous when malfunctioning occurs, a means to prevent rotation without interfering with the continued operation of the engine must be provided.

43. By amending § 23.1165 by adding a new paragraph (f) to read as follows:

**§ 23.1165 Engine ignition systems.**

* * * * *

(f) In addition, for commuter category airplanes, each turbopropeller ignition system must be an essential electrical load.

44. By amending § 23.1193 by adding a new paragraph (g) to read as follows:

**§ 23.1193 Cowling and nacelle.**

* * * * *

(g) In addition, for commuter category airplanes, the airplane must be designed so that no fire originating in any engine compartment can enter, either through openings or by burn-through, any other region where it would create additional hazards.

45. By adding a new § 23.1195 to read as follows:

**§ 23.1195 Fire extinguishing systems.**

For commuter category airplanes, fire extinguishing systems must be installed and compliance shown with the following:

(a) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids or gases for which a fire originating in these sections is shown to be controllable, a fire extinguisher system must serve each engine compartment;

(b) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one shot" system may be used.

(c) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

46. By adding a new § 23.1197 to read as follows:

**§ 23.1197 Fire extinguishing agents.**

For commuter category airplanes, the following applies:

(a) Fire extinguishing agents must—

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system; and

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored.

(b) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors (from leakage during normal operation of the airplane or as a result of discharging the fire extinguisher on the ground or in flight) from entering any personnel compartment, even though a defect may exist in the extinguishing system. This must be shown by test except for built-in carbon dioxide fuselage compartment fire extinguishing systems for which—

(1) Five pounds or less of carbon dioxide will be discharged, under established fire control procedures, into any fuselage compartment; or

(2) Protective breathing equipment is available for each flight crewmember on flight deck duty.

47. By adding a new § 23.1199 to read as follows:

**§ 23.1199 Extinguishing agent containers.**

For commuter category airplanes, the following applies:

(a) Each extinguishing agent container must have a pressure relief to prevent bursting of the container by excessive internal pressures.

(b) The discharge end of each discharge line from a pressure relief connection must be located so that discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(c) A means for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(d) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from—

(1) Falling below that necessary to provide an adequate rate of discharge; or

(2) Rising high enough to cause premature discharge.

(e) If a pyrotechnic capsule is used to discharge the extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

48. By adding a new § 23.1201 to read as follows:

**§ 23.1201 Fire extinguishing system materials.**

For commuter category airplanes, the following apply:

(a) Material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard.

(b) Each system component in an engine compartment must be fireproof.

49. By amending § 23.1203 by removing the word "and" in the introductory sentence and inserting a ","; and by inserting the phrase ", and all commuter category airplanes" between the words "turbo-superchargers" and "the" at the end of the introductory paragraph.

**§ 23.1203 [Amended]**

50. By revising § 23.1305 (f), (h), and (k), to read as follows:

**§ 23.1305 Powerplant instruments.**

* * * * *

(f) A cylinder head temperature indicator for—

(1) Each air-cooled engine with cowl flaps and for each airplane for which compliance with § 23.1041 is shown at a speed higher than $V_y$; and

(2) Each reciprocating engine-powered commuter category airplane.

* * * * *

(h) A manifold pressure indicator for—

(1) Each altitude engine; and

(2) Each reciprocating engine-powered commuter category airplane.

* * * * *

(k) A fuel flowmeter for—

(1) Each turbine engine or fuel tank if pilot action is required to maintain fuel flow within limits; and

(2) Each turbine-powered commuter category airplane.

* * * * *

51. By amending § 23.1309 by adding a new paragraph (d) to read as follows:

**§ 23.1309 Equipment, systems and installations.**

* * * * *

(d) In addition, for commuter category airplanes, systems and installations must be designed to safeguard against hazards to the airplane in the event of their malfunction or failure. When an installation requires a power supply and the function of that installation is necessary to show compliance with the applicable requirements, the installation must be considered an essential load on the power supply. The power sources and the distribution system must be capable of supplying the following power loads in probable operation combinations and for probable durations:

(1) All essential loads after failure of any prime mover, power converter, or energy storage device;

(2) All essential loads after failure of any one engine on two-engine airplanes; and

(3) In determining the probable operating combinations and durations of essential loads for the power failure conditions described in paragraphs (d) (1) and (2) of this section, the assumption may be that the power loads are reduced in accordance with a monitoring procedure which is consistent with safety for the types of operations for which approval is requested.

52. By amending § 23.1323 by adding new paragraphs (c) and (d) to read as follows:

**§ 23.1323 Airspeed indicating system.**

* * * * *

(c) In addition, for commuter airplanes, the airspeed indicating system must be calibrated to determine the system error in flight and during the accelerate-takeoff ground run. The ground run calibration must be obtained between 0.8 of the minimum value of $V_1$, and 1.2 times the maximum value of $V_1$ considering the approved ranges of altitude and weight. The ground run calibration must be determined assuming an engine failure at the minimum value of $V_1$.

(d) For commuter category airplanes, the information showing the relationship between IAS and CAS determined in accordance with paragraph (c) of this section must be shown in the Airplane Flight Manual.

53. By amending § 23.1325 by adding a new paragraph (f) to read as follows:

**§ 23.1325 Static pressure system.**

* * * * *

(f) For commuter category airplanes, the altimeter system calibration, required by paragraph (e) of this section, must be shown in the Airplane Flight Manual.

54. By amending § 23.1351, by revising paragraph (a)(2); by revising paragraphs (b)(2), (b)(3), and (b)(4) and by adding a new (b)(5); and by revising paragraph (d) to read as follows:

**§ 23.1351 General.**

* * * * *

(a) * * *

(2) Compliance with subparagraph (a)(1) of this section must be shown as follows—

(i) For normal, utility, and acrobatic category airplanes, by an electrical load analysis or by electrical measurements that account for the electrical loads applied to the electrical system in probable combinations and for probable durations; and

(ii) For commuter category airplanes, by an electrical load analysis that accounts for the electrical loads applied to the electrical system in probable combinations and for probable durations.

(b) * * *

(2) Electric power sources must function properly when connected in combination or independently, except alternators installed in normal, utility, and acrobatic category airplanes, may depend on a battery for initial excitation or for stabilization.

(3) No failure or malfunction of any electric power source may impair the ability of any remaining source to supply load circuits essential for safe operation, except the operation of an alternator that depends on a battery for initial excitation or for stabilization may be stopped by failure of that battery in normal, utility, and acrobatic category airplanes.

(4) Each electric power source control must allow the independent operation of each source, except in normal, utility and acrobatic category airplanes, controls associated with alternators which depend on a battery for initial excitation or for stabilization need not break the connection between the alternator and its battery.

(5) In addition, for commuter category airplanes, the following apply:

(i) Each system must be designed so that essential load circuits can be supplied in the event of reasonably probable faults or open circuits including faults in heavy current carrying cables;

(ii) A means must be accessible in flight to the flight crewmembers for the individual and collective disconnection of the electrical power sources from the system;

(iii) The system must be designed so that voltage and frequency, if applicable, at the terminals of all essential load equipment can be maintained within the limits for which the equipment is designed during any probable operating conditions;

(iv) If two independent sources of electrical power for particular equipment or systems are required, their electrical energy supply must be ensured by means such as duplicate electrical equipment, throwover switching, or multichannel or loop circuits separately routed; and

(v) For the purpose of complying with this paragraph, the distribution system includes the distribution busses, their associated feeders, and each control and protective device.

* * * * *

(d) *Instruments.* A means must exist to indicate to appropriate flight crewmembers the electric power system quantities essential for safe operation.

(1) For normal, utility, and acrobatic category airplanes with direct current systems, an ammeter that can be switched into each generator feeder may be used and, if only one generator exists, the ammeter may be in the battery feeder.

(2) For commuter category airplanes, the essential electric power system quantities include the voltage and current supplied by each generator.

* * * * *

55. By amending § 23.1523 by revising paragraph (a) to read as follows:

**§ 23.1523 Minimum flight crew.**

* * * * *

(a) The workload on individual crewmembers and, in addition for commuter category airplanes, each crewmember workload determination must consider the following:

(1) Flight path control,

(2) Collision avoidance,

(3) Navigation,

(4) Communications,

(5) Operation and monitoring of all essential airplane systems,

(6) Command decisions, and

(7) The accessibility and ease of operation of necessary controls by the appropriate crewmember during all normal and emergency operations when at the crewmember flight station.

* * * * *

56. By amending § 23.1581 by adding a new paragraph (e) to read as follows:

**§ 23.1581 General.**

* * * * *

(e) Provision must be made for stowing the Airplane Flight Manual in a suitable fixed container which is readily accessible to the pilot.

57. By amending § 23.1583 by adding new paragraphs (a)(3), (c)(3), (c)(4), and (e)(4) to read as follows:

**§ 23.1583 Operating limitations.**

(a) * * *

(3) In addition, for commuter category airplanes—

(i) The maximum operating limit speed, $V_{MO}/M_{MO}$ and a statement that this speed may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training;

(ii) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures; and

(*iii*) The airspeed limits must be shown in terms of $V_{MO}/M_{MO}$ instead of $V_{NO}$ and $V_{NE}$.

* * * * *

(c) * * *

(3) In addition, for commuter category airplanes, the maximum takeoff weight for each altitude, ambient temperature, and required takeoff runway length within the range selected by the applicant may not exceed the weight at which—

(i) The all-engine-operating distance determined under § 23.59 or the accelerate-stop distance determined under § 23.55, whichever is greater, is equal to the available runway length;

(ii) The airplane complies with the one-engine-inoperative takeoff distance requirements of § 23.59; and

(iii) The airplane complies with the one-engine-inoperative takeoff and en route climb requirements of §§ 23.57 and 23.67.

(4) In addition, for commuter category airplanes, the maximum landing weight for each altitude, ambient temperature, and required landing runway length, within the range selected by the applicant. The maximum landing weights may not exceed:

(i) The weight at which the landing distance is determined under § 23.75; or

(ii) The weight at which compliance with § 23.77 is shown.

* * * * *

(e) * * *

(4) *Commuter category airplanes.* For commuter category airplanes, acrobatic maneuvers, including spins, are unauthorized.

* * * * *

58. By amending § 23.1585 by adding a new paragraph (h) to read as follows:

**§ 23.1585 Operating procedures.**

* * * * *

(h) In addition, for commuter category airplanes, the procedures for restarting turbine engines in flight, including the effects of altitude, must be set forth in the Airplane Flight Manual.

59. By amending § 23.1587 by adding a new paragraph (d) to read as follows:

**§ 23.1587 Performance information.**

* * * * *

(d) *Commuter category airplanes.* In addition, for commuter category airplanes, the Airplane Flight Manual must contain at least the following performance information:

(1) Sufficient information so that the takeoff weight limits specified in § 23.1583 can be determined for all temperatures and altitudes within the operational limitations selected by the applicant;

(2) The conditions under which the performance information was obtained including the airspeed at the 50-foot height used to determine the landing distance as required by § 23.75;

(3) The performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights) for—

(i) Climb in the landing configuration as determined by § 23.77; and

(ii) Landing distance as determined by § 23.75;

(4) Procedures information established in accordance with the limitations and other information for safe operation of the airplane in the form of recommended procedures;

(5) An explanation of significant or unusual flight and ground handling characteristics of the airplane; and

(6) Airspeed, as calibrated airspeed, corresponding to those established while showing compliance to § 23.53, Takeoff speeds.

60. By amending Appendix F by revising the introductory text; redesignating paragraph (e) as paragraph (f); by adding the words "and (e)" after the words "in paragraph (d)" in paragraph (b); by revising paragraph (d); and by adding a new paragraph (e) to read as follows:

**Appendix F to Part 23—Test Procedure**

An Acceptable Test Procedure for Self-Extinguishing Materials for Showing Compliance with § 23.853.

* * * * *

(d) *Vertical test.* A minimum of three specimens must be tested and the results averaged. For fabrics, the direction of weave corresponding to the most critical flammability conditions must be parallel to the longest dimension. Each specimen must be supported vertically. The specimen must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pryometer in the center of the flame must be 1550 degrees F. The lower edge of the specimen must be three-fourths inch above the top edge of the burner. The flame must be applied to the center line of the lower edge of the specimen. For materials covered by §§ 23.853(d)(3)(i) and 23.853(f), the flame must be applied for 60 seconds and then removed. For materials covered by § 23.853(d)(3)(ii), the flame must be applied for 12 seconds and then removed. Flame time, burn length, and flaming time of drippings, if any, must be recorded. The burn length determined in accordance with paragraph (f) of this Appendix must be measured to the nearest one-tenth inch.

(e) *Horizontal test.* A minimum of three specimens must be tested and the results averaged. Each specimen must be supported horizontally. The exposed surface when installed in the airplane must be face down for the test. The specimen must be exposed to a Bunsen burner or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1550° F. The specimen must be positioned so that the edge being tested is three-fourths of an inch above the top of, and on the center line of, the burner. The flame must be applied for 15 seconds and then removed. A minimum of 10 inches of the specimen must be used for timing purposes, approximately 1½ inches must burn before the burning front reaches the timing zone, and the average burn rate must be recorded.

* * * * *

61. By amending Appendix G, Section G 23.3 by adding a new paragraph (h) to read as follows:

**Appendix G to Part 23—Instructions for Continued Airworthiness**

G 23.3 *Content.*

* * * * *

(h) In addition, for commuter category airplanes, the following information must be furnished:

(1) Electrical loads applicable to the various systems;

(2) Methods of balancing control surfaces;

(3) Identification of primary and secondary structures; and

(4) Special repair methods applicable to the airplane.

## PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

62. The authority citation for Part 21 is revised to read as follows and the authority citations following the sections in Part 21 are removed:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

**§ 21.19 [Amended]**

63. By amending § 21.19 by inserting "commuter," before the word "or" in paragraph (b), introductory text.

**§ 21.21 [Amended]**

64. By amending § 21.21 by inserting "commuter," after "acrobatic," in the section heading and in the introductory paragraph.

**§ 21.27 [Amended]**

65. By amending § 21.27 by inserting "commuter," after the word "acrobatic" in paragraph (a); by inserting in the table in paragraph (f) "Commuter category airplanes" in the table under the heading "Type of aircraft" and below "Small turbine engine-powered airplanes"; by inserting "After (January 15, 1987)" in the table under the heading "Date accepted for operational use by the Armed Forces of the United States" and below the date "Oct. 1, 1959"; and by inserting "FAR Part 23 as of (January 15, 1987)" in the table under the heading "Regulations that Apply."

**§ 21.37 [Amended]**

66. By amending § 21.37 by inserting "commuter," after "acrobatic,".

**§ 21.39 [Amended]**

67. By amending § 21.39(a) by inserting "commuter," after "acrobatic,".

**§ 21.73 [Amended]**

68. By amending § 21.73(c) by inserting "commuter," and after "acrobatic,".

**§ 21.93 [Amended]**

69. By amending § 21.93(b)(3) by inserting the words "commuter category and" after the word "driven" in the first sentence of the paragraph.

**§ 21.175 [Amended]**

70. By amending § 21.175(a) by inserting "commuter," after "acrobatic,".

**§ 21.183 [Amended]**

71. By amending § 21.183 by inserting "commuter," after "acrobatic," in the heading; and by inserting "commuter," after "acrobatic," in the first sentence of paragraph (e)(2).

**§ 21.195 [Amended]**

72. By amending § 21.195(b) by inserting "commuter," after "acrobatic,".

**§ 21.213 [Amended]**

73. By amending § 21.213(c) by inserting "commuter," after "acrobatic," in the last sentence of the paragraph.

74. By amending § 21.231 by redesignating paragraphs (a)(2), through (a)(5) as paragraphs (a)(3) through (a)(6) respectively, and by adding a new paragraph (a)(2) to read as follows:

**§ 21.231 Applicability.**

* * * * *

(a) * * *

(2) Commuter category airplanes;

* * * * *

**§ 21.327 [Amended]**

75. By amending § 21.327 by inserting "and commuter category airplanes," after the words "transport aircraft" in the second sentence of paragraph (f)(2).

## PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

76. The authority citation for Part 36 is revised to read as follows and the authority citations following the sections in Part 36 are removed:

**Authority:** 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et. seq.; Sec. 124 of Pub. L. 98-473, E.O. 11514, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

**§ 36.1 [Amended]**

77. By amending § 36.1 by inserting the phrase "and for propeller-driven, commuter category airplanes" after the words "small airplanes," in paragraph (a)(2); and by inserting the words "for propeller-driven, commuter category airplanes and" after the words "§ 21.185" in paragraph (e).

**§ 36.9 [Amended]**

78. By amending § 36.9 by inserting the words "and propeller-driven, commuter category airplanes" after the words "small airplanes" in the section heading; and by inserting the phrase "and for propeller-driven, commuter category airplanes" after the word "categories" in the introductory paragraph.

**Subpart F—[Amended]**

79. By amending the heading of Part 36, Subpart F by inserting the words "and Propeller-Driven, Commuter Category Airplanes" after the words "Small Airplanes".

**§ 36.501 [Amended]**

80. By amending § 36.501(a)(2) by inserting the phrase "and propeller-driven, commuter category airplanes" after the words "small airplanes."

**§ 36.1581 [Amended]**

81. By amending § 36.1581(d) by inserting the phrase "and for propeller-driven, commuter category airplanes" after the words "small airplanes."

**Appendix F—[Amended]**

82. By amending Appendix F of Part 36 by inserting the phrase "and for Propeller-Driven, Commuter Category Airplanes" after the words "Small Airplanes" in the Appendix heading; by removing the phrase "up to and including 12,500 pounds" in § F36.301, paragraph (b); and by removing the phrase "at weights from and including 3,300 pounds to and including 12,500 pounds" from § F36.301, paragraph (c).

## PART 91—GENERAL OPERATING AND FLIGHT RULES

82A. The authority citation for Part 91 is revised to read as follows:

**Authority:** 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

82B. By amending § 91.213 by adding a new paragraph (a)(3) to read as follows:

**§ 91.213 Second-in-command requirements.**

(a) * * *

(3) A commuter category airplane, except that a person may operate a commuter category airplane notwithstanding paragraph (a)(1) of this section, that has a passenger seating configuration, excluding pilot seats, of nine or less without a pilot who is designated as second in command if that airplane is type certificated for operations with one pilot.

* * * * *

## PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

83. The authority citation for Part 135 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

84. By amending § 135.169 by revising paragraphs (a) and (b) introductory text; by deleting "or" at the end of paragraph (b)(5); by deleting the "." and inserting "; or" at the end of paragraph (b)(6); and by adding new paragraph (b)(7) to read as follows:

**§ 135.169 Additional airworthiness requirements.**

(a) Except for commuter category airplanes, no person may operate a large airplane unless it meets the additional airworthiness requirements of §§ 121.213 through 121.283, 121.307, and 121.312 of this chapter.

(b) No person may operate a reciprocating-engine or turbopropeller-powered small airplane that has a passenger seating configuration, excluding pilot seats, or 10 seats or more unless it is type certificated—

* * * * *

(7) In the commuter category.

* * * * *

85. By revising § 135.363 to add a new paragraph (j) to read as follows:

**§ 135.363 General.**

* * * * *

(j) Each certificate holder operating a commuter category airplane shall comply with § 135.398.

86. By adding a new § 135.398 to read as follows:

**§ 135.398 Commuter category airplanes performance operating limitations.**

(a) No person may operate a commuter category airplane unless that person complies with the takeoff weight limitations in the approved Airplane Flight Manual.

(b) No person may take off an airplane type certificated in the commuter category at a weight greater than that listed in the Airplane Flight Manual that allows a net takeoff flight path that clears all obstacles either by a height of at least 35 feet vertically, or at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries.

(c) No person may operate a commuter category airplane unless that

person complies with the landing limitations prescribed in §§ 135.385 and 135.387 of this Part. For purposes of this paragraph, §§ 135.385 and 135.387 are applicable to all commuter category airplanes notwithstanding their stated applicability to turbine-engine-powered large transport category airplanes.

(d) In determining maximum weights, minimum distances and flight paths under paragraphs (a) through (c) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, and ambient temperature, and wind component at the time of takeoff.

(e) For the purposes of this section, the assumption is that the airplane is not banked before reaching a height of 50 feet as shown by the net takeoff flight path data in the Airplane Flight Manual and thereafter the maximum bank is not more than 15 degrees.

Issued in Washington, DC on January 8, 1987.

**Donald D. Engen,**

*Administrator.*

[FR Doc. 87-754 Filed 1-12-87; 9:45 am]

BILLING CODE 4910-13-M

Federal Register

Thursday
January 15, 1987

Part IV

# Department of the Interior

Minerals Management Service, Bureau of Land Management

30 CFR Parts 202, 203, 206, 212, and 218
43 CFR Part 3480

Revision of Coal Product Valuation Regulations and Related Topics; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**Bureau of Land Management**

**30 CFR Parts 202, 203, 206, 212, and 218**

**43 CFR Part 3480**

## Revision of Coal Product Valuation Regulations and Related Topics

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rulemaking provides for the amendment and clarification of regulations governing the valuation of coal for royalty purposes. The regulations being amended affect Federal coal leases and Indian (Tribal and allotted) coal leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

In addition, the proposed rule establishes definitions related to the valuation of coal covered in Subpart F of Part 206.

The purpose of this rulemaking is to update, consolidate, and clarify existing regulations in order to provide industry and the public with a comprehensive and consistent coal valuation policy.

**DATES:** Comments must be submitted on or before April 15, 1987. The hearing is scheduled to be held on: March 3, 1987, 8:30 a.m. to 4:00 p.m., in Denver, Colorado.

**ADDRESSES:** Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

The hearings will be held at the following location: Denver—Sheraton Airport Hotel, 3535 Quebec Street, Denver, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Whitcomb (303) 231–3432, (FTS) 326–3432.

**SUPPLEMENTARY INFORMATION:** The principal authors of this proposed rule are Earl Cox, Herbert B. Wincentsen, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Minerals Management Service (MMS) Lakewood, Colorado; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

### I. Introduction

On January 9 and 10, 1986, the first meeting of the Royalty Management Advisory Committee (RMAC) was held in Lakewood, Colorado. (See Notice of Meeting, 50 FR 52385, Dec. 23, 1985). The RMAC, which is composed primarily of representatives from States, Indian Tribes and allottees, and the coal, oil, and gas industry, was charged with the responsibility of advising the Secretary of the Interior about the form and content of changes to the MMS' regulations governing the value, for royalty purposes, of coal, oil, and gas production from Federal and Indian leases.

At the first RMAC meeting, the Committee asked the Secretary to withhold promulgation of proposed valuation regulations until the Committee had an opportunity to review the issues and make its recommendations. The Secretary agreed to the request, and in response to the Committee's request, the MMS made available to the RMAC its latest drafts of regulations governing the valuation of coal, oil, and gas, and those governing transportation and processing allowances. At the same time, MMS made copies of those same draft regulations available to the public (51 FR 4507, Feb. 5, 1986, and 51 FR 7811, March 6, 1986). Public comment on the drafts was requested both in written form and at a public meeting held in Lakewood, Colorado, on March 19, 1986.

The RMAC formed three working panels to review the draft coal, oil, and gas rules, and the transportation and processing rules related to each product. Between January and October 1986, the various working panels held several meetings to review the draft rules. The working panel meetings were published in the **Federal Register** and the meetings were open to members of the public, many of whom participated actively.

Each of the three working panels prepared a detailed set of recommendations to the RMAC. These were reviewed at the RMAC meetings held July 28–30, 1986, and October 20–22, 1986. The RMAC was unable to approve the reports of both the oil and the gas panels for transmission to the Secretary, which, by the terms of the RMAC's charter, required a two-thirds vote of the Committee membership. The RMAC did approve, for submission to the Secretary, a set of recommendations regarding certain of the provisions contained in the coal valuation regulations.

MMS representatives were present at, and participated in, all meetings of the RMAC and the working panels. As a consequence of the extensive discussion between members of the groups representing the States, Indians, and the industries, and the detailed written recommendations prepared by the working panels, MMS' task of drafting proposed valuation regulations has been enhanced significantly. In preparing these proposed regulations, MMS has carefully considered all of the discussions which occurred at the various meetings, regardless of whether they were adopted in any of the three working panel reports or by the full Committee. MMS also has considered the written and oral comments from the public on the draft rules and the resolution presented to the Secretary by the RMAC. MMS appreciates the hard work and dedication of a large number of people who were willing to work toward the common goal of clarifying and improving the regulations governing the valuation, for royalty purposes, of coal, oil, and gas production from Federal and Indian leases.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section on this preamble. Comments must be received on or before April 15, 1987. A public hearing will be held on the date and at the location identified in the **DATES** and **ADDRESSES** sections of this preamble.

### II. Purpose and Background

The Minerals Management Service (MMS) is proposing to revise the current regulations regarding the valuation of coal to accomplish the following:

1. Consolidation of the existing regulations currently at 30 CFR 203.200 and 43 CFR 3485.2.

2. Creation of regulations consistent with the present organizational structure of the Department of the Interior. (The existing regulations were issued when product valuation for coal was performed by an organization that is now part of the Bureau of Land Management (BLM).)

3. Placement of the coal product valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

4. Clarification that royalty is to be paid on all consideration received by the lessee, less applicable allowances, for production removed or sold from the lease.

5. Creation of regulations to guide lessees in the determination of allowable washing and transportation costs for coal to aid in the calculation of the proper royalty due the lessor.

When published, these rules would supersede all curently effective coal royalty valuation directives, such as those contained in numerous Secretarial, MMS, and U.S. Geological Survey Conservation Division (now Bureau of Land Management Onshore Operations) decisions and orders, and would be applied prospectively from the effective date of the final rule to all leases including production from existing leases.

This proposed rule is one of several which MMS intends to propose in the near future. Other proposed rules will address valuation of oil and gas, as well as allowances for transportation and processing of oil and gas.

Structurally, the rules proposed today add sections to 30 CFR Parts 202, 203, and 206, revise sections in Parts 212 and 218, and remove paragraphs from 30 CFR 203.200 and 43 CFR 3485.2. Paragraphs (d) and (b) of § 203.200 would be redesignated to Part 218 as § 218.201 and Part 202 as § 202.251, respectively. A new § 203.250 would be added to Subpart F (formerly Subpart E) of Part 203. Also, §§ 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257, 206.258, 206.259, 206.260, 206.261, 206.262, 206.263, and 206.264 would be added to newly redesignated Subpart F (formerly Subpart E) of Part 206.

For the convenience of coal lessees, payors, and the public, the following chart summarizes the effects of the proposed rule:

| Regulation changes (all from 30 CFR, except as noted) | Descriptions |
|---|---|
| I. Redesignations: | |
| 1. Subparts E, F, and G of Parts 202, 203, and 206 are redesignated as Subparts F, G, and H, respectively. §§ 206.300, 206.301, are correspondingly redesignated §§ 206.350, 206.351. | This administrative action permits the insertion of a new Subpart E—"Solid Minerals, General" of these Parts. |
| 2. Subpart F of Part 212 is redesignated as H. | This administrative action reorganizes more appropriately Part 212 to be consistent with Parts 202, 203, and 206. |
| 3. Paragraph 203.200(b) is redesignated to Part 218 § 218.201. | This administrative action more appropriately locates within 30 CFR the information contained in this paragraph. |
| 4. Paragraph 203.200(d) is designated to Part 202 as § 202.250. | This administrative action more appropriately locates within 30 CFR the information contained in this paragraph. |
| 5. Paragraph 203.200(a) is redesignated to § 203.250. | This administrative action more appropriately locates within 30 CFR the information contained in this paragraph. |
| II. Deletions: | |
| 1. Paragraphs 203.200(c), 203.200(e), 203.200(f), 203.200(g), 203.200(h), 203.200(i), 203.200(j), and 203.200(k) are removed. | This action eliminates the existing coal product valuation regulations. |
| 2. Paragraphs 3485.2(d), 3485.2(e), 3485.2(f), 3485.2(g), 3485.2(h), 3485.2(i), and 3485.2(k) are removed. | This action eliminates the existing coal product valuation regulations found at Subpart 3485 of 43 CFR. These regulations are redundant with those at § 203.200, of 30 CFR Part 203, and would conflict with the new regulations intended to replace those in § 203.200. |
| III. Additions: | |
| 1. Section 203.250 is added to Subpart F of Part 203. | This action is intended to clearly indicate that decisions to reouce a royalty rate are the responsibility of the Bureau of Land Management. |
| 2. Sections 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257, 206.258, 206.259, 206.260, 206.261, 206.262, 206.263, and 206.264 are to be added to new Subpart F of Part 206. | The addition of these sections provides new coal valuation regulations to replace those currently found at § 203.200 of 30 CFR and § 3485.2 of 43 CFR. |
| 3. Subpart I—"OCS Sulfur (Reserved)" is added to Parts 202, 203, 206, and 212. | This administrative action creates a new subpart for future rulemaking requirements. |
| 4. Subpart F—"Coal (Reserved)" and Subpart G—"Other Solid Minerals (Reserved)" is added to Part 212. | This administrative action creates new subparts for future rulemaking requirements. |
| IV. Amendments: | |
| 1. Section 212.250 is amended. | This technical amendment deletes the obsolete reference to the "District Mining Supervisor" and replaces the "Associate Director for Royalty Management" with "MMS" for consistence with other Parts. |
| 2. Part 212, Subpart G—"Indian Lands—(Reserved)" is amended to read "Other Solid Minerals (Reserved)". | This administrative action changes the title of Subpart G of Part 212 to be consistent with Subpart G of Parts 202, 203, and 206. |

These proposed rules would apply the same valuation standards to coal produced on Indian lands and coal produced on Federal lands. Except for cents-per-ton leases (which currently have specific royalty provisions in Title 25 of the Code of Federal Regulations, *see* 25 CFR 211.15(c), 212.18(c), 213.21(c), and 214.10(b)), this is a continuation of the practices under the existing regulations. MMS believes the proposed valuation methods would yield a reasonable and long-term maximum rate of return for both Federal and Indian leases. The basic premise underlying this methodology is that value is best determined by the interaction of competing market forces—the 7/8ths or 4/5ths owner is going to negotiate the best deal he can to further his own interests, advancing those of the royalty owner as well. This would add certainty to the market place and assure maximum, long-term revenues to all parties concerned. Comments are especially requested on this issue.

The proposed rules would expressly recognize, however, that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease, statute, or treaty would govern to the extent of the inconsistency. The same principle would apply to Federal leases.

### III. Section-by-Section Analysis

*Proposed § 206.250, Purpose and scope,* is an introductory section stating that Subpart F would prescribe the procedures to establish the royalty value of coal produced from all Federal and Indian leases, except Osage Indian leases. However, paragraph (b) would incorporate the principle that if the specific provisions of any lease, statute, or treaty are inconsistent with the regulations, then the lease, statute, or treaty provisions would govern to the extent of the inconsistency. This principle would apply to existing leases as well as leases executed after the effective date of these regulations.

Paragraph (c) would expressly notify all lessees that all royalty payments are subject to audit and adjustment, where necessary, within the applicable statute of limitations. MMS conducts an ongoing audit program of lessees. States also conduct audits pursuant to cooperative agreements and delegations of authority as authorized by sections 202 and 205 of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1732 and 1735. Further, the DOI Office of Inspector General and the General Accounting Office (GAO) from time to time conduct lessee and payor audits. Hence, all records and supporting information necessary to support royalty payments made to MMS must be maintained for a period of 6 years from the date of payment. See 30 CFR 212.200, and 30 U.S.C. 1713 (which is applicable to oil and gas), the concept of which would be extended by that rule to coal.

*Proposed § 206.251, Definitions,* sets forth definitions applicable to the proposed coal valuation regulations as well as the coal transportation and washing allowance regulations.

Most of the proposed definitions are straightforward and self-explanatory. A few of the definitions, however, require some explanation. Comments are requested on all definitions because MMS may adopt any final definition necessary to implement policy or legal conclusions made in the formulation of the final substantive royalty valuation rules for coal.

"Ad valorem lease" would be defined as a lease where the royalty due to the lessor is based upon a percentage of the

amount or value of the production. This lease is now the most typical Federal and Indian lease form. Ad valorem coal leases are distinguished from cents-per-ton coal leases, where the royalty is based upon a dollar amount payable per ton prescribed in the lease.

"Arm's-length contract" would be defined as a contract or agreement between independent, nonaffiliated persons. The definition would further provide that two persons are affiliated if one person controls, is controlled by, or is under common control with another person, *or* if one person owns an interest (regardless of the amount), either directly or indirectly, in another person. This definition is important to the regulations because, as is explained further below, MMS is proposing that the gross proceeds under an arm's-length contract would be accepted as value. Other valuation criteria would apply to non-arm's-length contracts.

The thrust of the proposed arm's-length contract definition is to include within its coverage only those contracts between persons who have no affiliation or interrelationship of any kind that would cause the contract terms to be suspect as to their arm's-length nature. MMS recognizes that by excluding from the definition those contracts between persons where one party to the contract has any ownership interest in the other, it is narrowing the universe of contracts which would fall within the scope of the definition.

MMS has proposed a definition for arm's-length contract that excludes references to such matters as "adverse economic interests" or "free and open markets" because the inclusion of such sometimes subjective concepts would make a lessee's determination that its contract was arm's-length subject to uncertainty. The advantage to the proposed definition is that it would be almost purely objective, and lessees and other payors would have assurance that if they pay royalties on the basis of gross proceeds from an arm's-length contract, the royalty valuation would not later be susceptible to redetermination.

MMS would like commenters to address whether a list of items could be developed which could serve to define an arm's-length contract. Specifically, is there a list of questions which a lessee could answer which would lead to an objective determination of whether it was an arm's-length contract? Possible questions are: (1) Is there a common equity interest between the parties to the contract; (2) is there common control of the parties to the contract; (3) was there a consolidated tax filing by the parties to the contract. MMS would like commenters to address whether the development of such a list is possible and what questions should be part of the list.

The term "gross proceeds" is another term important to the regulations because it would be a common royalty value determinant. Gross proceeds is proposed to be defined as the total monies or other consideration paid to a coal lessee, or monies or other consideration to which such lessee is entitled, for the disposition of coal. Gross proceeds would be defined to include payments to the lessee for certain services such as crushing, storing, mixing, loading, treatment with chemicals or oil, and other coal preparation that the lessee is obligated to perform at no cost to the lessor. Gross proceeds also would be defined to include: payments or credits for advanced prepaid reserve payments, or advanced exploration or development costs, subject to recoupment through reduced prices in later sales; take-or-pay payments; and reimbursements where the purchaser reimburses the seller, or pays any costs on behalf of the seller, for such items as severance taxes and income taxes. In the proposed regulation, MMS has proposed language in brackets to exclude two types of reimbursements which otherwise would be included in the definition of gross proceeds, i.e.; reimbursements for Federal black lund fees and reimbursements for abandoned mine lands fees authorized by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. MMS received several requests to exclude these fees because the Federal Government effectively could increase royalties by increasing the fees. The MMS recognizes that similar arguments could be made about other items which are proposed to be included in the definition of gross proceeds and the exclusion of Federal black lung fees and abandoned mine lands fees could set a precedent for the exclusion of other items. The MMS also recognizes that the exclusion of these two Federal fees would lead to a reduction in royalty collections. MMS specifically requests comments on these issues.

The definition of gross proceeds is intended to be expansive to ensure that it includes all the benefits flowing from the purchaser to, or on behalf of, the seller for the disposition of the coal, with the possible exceptions noted above.

"Lessee" would be defined as any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, and any person who has assumed an obligation to make royalty or other payments required by the lease. MMS also is proposing to expressly include in the definition all persons who may have to make royalty payments. This would include all persons who have an interest in a lease as well as an operator or other payor, including in some instances the purchaser, who has assumed a royalty payment responsibility by contract or other agreement with the persons who have the actual lease interests. By using this broad definition for the product valuation regulations, it would not be necessary to use multiple terms such as lessee/payor/operator throughout the rules. This definition is not intended to change any contractual obligations under the lease instrument between the lessor and the current or original lease holder, except as it pertains to royalty valuation.

MMS would like commenters to address whether other terms used in these proposed regulations need to be defined.

*Proposed §§ 206.252, .253 and .254* are self-explanatory and straightforward.

*Proposed § 206.255, Coal subject to royalties—general provisions,* sets forth general policies regarding what coal is subject to royalty and which payments made to a lessee are subject to royalty. Proposed § 206.255(a) requires that royalty be paid on all coal used by the lessee, whether the coal is used on the lease or off the lease. An example of such usage by the lessee includes coal used for drying purposes when coal has been washed, or coal used for space heating in buildings, offices, warehouses, or other lessee facilities. Proposed § 206.255(a) requires that royalty be paid on coal avoidably lost, which determination is made by BLM. Proposed § 206.255(b) expresses MMS royalty policy regarding insurance compensation for coal unavoidably lost. MMS considers insurance payments to be proceeds on which royalties must be paid. Proposed § 206.255(c), which requires royalty payments on coal or coal products recovered from waste piles or slurry ponds, is a continuation and clarification of existing policy contained in the existing regulations at § 203.200(k). Royalty on coal recovered from waste piles or slurry ponds would be based on the current terms of the lease. Therefore, even if a lessee had initially extracted the coal from the ground under an earlier cents-per-ton royalty term, coal now recovered from waste piles or slurry ponds would require royalty on an ad valorem basis, if the lease royalty is now an ad valorem rate.

*Proposed § 206.256, Quality and quantity measurement standards for reporting and paying royalties,* requires that lessees for ad valorem leases report coal quality parameters of coal Btu's, percent sulfur, and percent ash. Coal quality markedly affects coal values. Often, if the coal shipped to a utility deviates from contract specifications, a price penalty will be levied against the shipper (lessee). When the lessee reports those lower values to MMS, the MMS must be aware that those lower values were caused by coal quality problems and are not necessarily an underpayment. This may avoid MMS investigations or audits triggered as a result of unexpectedly low values being reported from a particular lease or area. Coal quality and quantity information would be reported on forms already required for submittal under 30 CFR Part 216. Additionally, coal quantity information would be submitted on Form MMS–4014, Report of Sales and Royalty Remittance, already required pursuant to 30 CFR Part 210.

*Proposed § 206.257, Point of royalty determination,* would provide that, for royalty purposes, coal quantity and quality will be computed at the point of royalty measurement which BLM prescribes for lesses. This section would provide also that coal added to stockpiles or inventory at the mine does not require payment of royalties until it is later sold or disposed of. However, if the stockpile gets large, MMS may ask BLM or BIA to increase the lease bond to protect the lessor.

*Proposed § 206.258, Valuation standards for cents-per-ton leases.* The proposed regulations would distinguish between two classes of leases for royalty purposes. Section 206.258 would establish procedures to calculate royalties for those older coal leases that provide for the calculation of royalty on a cents-per-ton basis. Section 206.259, discussed below, would establish the procedures to determine the value of coal for the increasingly more common leases that require payment of royalty as a specified percentage of that value (ad valorem leases).

Existing Federal cents-per-ton leases are being readjusted to ad valorem leases as their current twenty-year lease terms end. See 43 CFR 3451.1.

Proposed § 206.258(b) would basically continue the existing requirement of § 203.200(e) that the royalty for coal from a cents-per-ton lease is based on the dollar amount per ton prescribed in the lease. In other words, the royalty is the prescribed rate multiplied by the tonnage. The proposed rule would specify, however, that the tonnage upon which the royalty rate is applied would be the actual volume measured in tons which is sold or used, including coal which is avoidably lost. This is a clarification of the existing requirements now contained at § 203.200(e). The valuation procedure prescribed in this section would apply whether the sales contract or other sales agreement is arm's-length or non-arm's-length.

As the terms of cents-per-ton leases become subject to readjustment, the royalty provisions of those leases are being changed to an ad valorem basis for royalty computation purposes. In many instances, coal mined before the readjustment date will not be sold until after that date. Paragraph (d) of proposed § 206.258 would provide that if coal is sold within 30 days after the readjustment date, then the royalty would be computed on the lease's old cents-per-ton basis. For all sales that occur after 30 days, no matter when the coal was mined, royalty would be computed on the new ad valorem basis.

The provision that royalty be paid for excess inventory in existing § 203.200(e) would be discontinued. This provision is inconsistent with a procedure which requires computation of royalty based upon the volume at the sales point. However, MMS is proposing to add language in § 206.257, discussed above, that expressly notifies the lessee that its lease bond may be increased to cover its royalty obligations for coal in stockpiles that is deemed excessive for normal business purposes.

*Proposed § 206.259, Valuation standards for ad valorem leases,* basically would establish a three-part process for royalty valuation. Paragraph (a) would state expressly that the value, for royalty purposes, of coal production would be the value of the coal determined pursuant to § 209.259, less applicable allowances for coal washing (§ 206.260) and transportation (§ 206.262). However, as explained further below, lessees would not be allowed to report a net number for the royalty value (i.e., value less allowances), but would be required to report the allowances separately on the Report of Sales and Royalty Remittance, Form MMS–4014. Lessees would not be entitled to deduct allowances in all situations (see discussion below). Paragraph (b) would retain the basic approach of existing § 203.200(f) that the value of coal sold pursuant to an arm's-length contract is the gross proceeds accruing, or which could accrue, to the lessee. As explained below, this value is subject to certain adjustments and allowances. If a contract does not meet the criteria for being arm's-length (see the definition in proposed § 206.251), then it is, of course, non-arm's-length. Non-arm's-length contracts are treated differently for valuation purposes, depending upon whether such a contract is comparable to other arm's-length contracts.

If the disposition of coal production from an ad valorem lease is not pursuant to an arm's-length contract, then the lessee must determine value using certain benchmarks. This valuation process would be used in the following circumstances: When there is no contract for the sale of coal; when coal is used in its entirety intra-company or intra-affiliate; when coal is passed, under contract or agreement, intra-company to an affiliate; or when coal is stolen, lost, wasted, or for any reason improperly disposed of without sale.

In situations such as the preceding, § 206.259(c)(2) of the proposed regulations would require that value must be determined through application of benchmarks in a prescribed order. In other words, the second benchmark would not be considered unless the first benchmark could not be applied. Likewise, the third and fourth benchmarks would not be considered unless each of those preceding it successively could not be applied.

The same considerations of certainty and consistency which underlie valuation under arm's-length contracts would also apply under non-arm's-length contracts when such arrangements accurately and fairly reflect the valuation principles of the proposed rules. Hence, for the first benchmark, pursuant to proposed § 206.259(c)(2)(i), if the gross proceeds under a non-arm's-length contract are equivalent to the lessee's gross proceeds derived from, or paid under, comparable arm's-length contracts for the sale or purchase of like-quality coal in the area, then the gross proceeds would be acceptable as value. To determine comparability, the factors to be considered would be price, time of execution, duration, market or markets served, terms, quality of coal, volume, and other factors which reflect the value of production.

Pursuant to proposed § 206.259(c)(2)(ii), the second benchmark would be similar to the first, except comparability of the gross proceeds under the lessee's non-arm's-length contracts would be measured against arm's-length contracts between other parties in the area, not with the lessee's own arm's-length contracts. However, the second benchmark would be used only if the first could not be applied.

If the first and second valuation benchmarks cannot be applied to a

particular situation, the third benchmark would be the coal prices reported (for the coal which is being valued) to a public utility commission and the fourth benchmark would be prices reported to the Energy Information Administration of the Department of Energy. Fuel prices reported to such regulatory bodies are used by those entities to evaluate the justness and reasonableness of electrical rates charged by electric utilities. MMS believes that the cost of fuel reported to the public utility commission or other regulatory agencies is an indicator of the value of the coal to the user and, hence, is acceptable as value for purposes of determining royalties.

In the event that prices reported to public utility commissions or other regulatory agencies are inapplicable to a particular valuation situation, a fifth benchmark, other relevant matters, would be implemented. Among the methods included in this benchmark are spot prices for the same quality coal which are published or publicly available. MMS also intends for this benchmark to include the relevant cost, price, or other information available to the lessee.

If the lessee cannot determine a reasonable value using any of the valuation procedures previously mentioned, it could use a net-back procedure to value the coal by working backwards from the end-use product's sales price to arrive at a value, for royalty purposes, at the lease or mine area. This last benchmark also would authorize use of any other reasonable method to determine value.

It should be noted here that when a valuation method other than gross proceeds is used for coal sold pursuant to a non-arm's-length contract, such as spot prices, the lessee may not be entitled to allowances. By way of illustration, if the value of coal is established under paragraph (iv) based upon spot prices in the area where the mine is located, the value would not be reduced by a transportation allowance even if the lessee actually sold the coal on a delivered basis at a point remote from the mine and incurred transportation expenses. The allowance would be inapplicable because the spot prices in this example already reflect value of coal in the mine area. However, pursuant to § 206.259(f), the valuation for the lessee's coal based on the spot prices could not be less than the lessee's gross proceeds reduced by its transportation costs.

Therefore, regardless of the valuation method used by MMS, under no circumstances can the value under § 206.259 be less than the gross proceeds accruing, or which could accrue, to the lessee, less applicable allowances. This long-standing principle is set forth at § 206.259(f), and is discussed in greater detail later in this preamble.

The MMS particularly solicits comments regarding the proposed ordering of valuation benchmarks.

Proposed § 206.259(d) would provide that for all production other than that valued pursuant to an arm's-length contract, as covered by § 206.259(b), the lessee is not required to obtain prior MMS approval of its value determination. However, all royalty values are subject to audit, and also are subject to other reviews and monitoring by MMS to determine compliance with the valuation criteria. If MMS determines that a lessee has not properly determined value, MMS could direct the lessee to pay at a different value. Also, a lessee may at any time request a value determination from MMS if it is unsure about how the lessee would be required to supply all available data to support valuation.

So as not to cause unnecessary delays, proposed § 206.259(h), discussed below, would permit the lessee who has requested a value determination to pay royalties at its proposed valuation until MMS issues its value determination. The lessee then would be entitled to a credit, or would be required to pay additional royalty plus an underpayment interest charge to compensate the Federal or Indian lessor for the time value of its loss of money. No penalties for improper reporting would be imposed for reporting initially the lower value, although penalties could be applied if there were other improper reporting or if the initial value obviously was not good faith.

Proposed § 206.259(e) would expressly impose a diligence requirement on lessees. For example, if pursuant to an arm's-length contract a lessee could charge its purchaser a higher price as of a certain date, if the lessee fails to take proper and timely action to collect that additional money, the lessee would be liable for royalty on the higher value. However, if the purchaser refuses to pay and the lessee attempts to enforce its right, using reasonable, documented measures, it would not be required to pay the additional royalties until the lessee's efforts are successfully concluded. MMS believes that this regulation reflects the lessee's obligation to operate the lease prudently for the mutual benefit of itself and the lessor.

Section 206.259(e) would not operate to excuse a lessee from paying any royalty if, for example, a purchaser received coal and then failed to pay. In such an event, the lessee still would be required to pay royalty based on the value of the coal. This section is intended to apply only to the lessee's obligation to pursue price increases to which it may be entitled under its contract.

Proposed § 206.259(f) restates the long-standing principle that under no circumstances can the value, for royalty purposes, be less than the gross proceeds accruing, or which could accrue, to the lessee, less applicable washing and transportation allowances. The definition of gross proceeds was discussed earlier with respect to § 206.251(k). It is worth noting again, however, that the gross proceeds accruing to the lessee includes all costs paid by the purchaser of the coal to (or to others on behalf of) the seller, including tax reimbursements and other reimbursements (with the exception of reimbursements for Federal black lung fees and abandoned mine land fees discussed above). This principle has been upheld in a long line of cases: *Wheless Drilling Co.*, 80 I.D. 599, 13 IBLA 21 (1973); *Amoco Production Co.*, 29 IBLA 234, 236 (1977); *Hoover & Bracken Energies, Inc.*, 52 IBLA 27, 88 ID 7 (1981), *aff'd*, 723 F.2d 1388 (10th Cir. 1983); *Knife River Coal Co.*, 29 IBLA 26 (1977); *Knife River Coal Co.*, 43 IBLA 104, 86 I.D. 472 (1979). Thus, if the purchaser reimburses the seller or pays any costs on behalf of the seller for such items as severance taxes or income taxes, then the seller must include those reimbursed costs as part of the gross proceeds upon which the royalty value is determined. As noted earlier, this section would permit the lessee to reduce the gross proceeds by applicable allowances when determining this minimum value for royalty purposes.

The proposed rules in § 206.259(g) also expressly retain the existing requirement that coal operations such as crushing, blending, storing, loading, and oiling or treating the coal with substances, are costs incurred to place the coal in marketable condition and are to be borne exclusively by the lessee. Proposed § 206.259(g) would provide further that where the royalty value is based on gross proceeds the value would be increased to the extent those gross proceeds were reduced because the purchaser, or any other person, is providing certain services the costs of which ordinarily are the sole responsibility of the lessee either to produce the coal or to place it in marketable condition.

Pursuant to proposed § 206.259(h), if lessees on ad valorem leases request a value determination by MMS, they may pay royalties for all coal production

based upon a value consistent with the regulation until MMS issues the value regulation. However, when the value determination is received, the lessee will be required to pay any additional royalties due for the retroactive period, plus an underpayment interest charge, and will be required to pay at the new value prospectively. If applicable, the lessee would get a credit for overpayment, without interest. The same requirements would apply in situations where MMS monitors, reviews, and audits a lessee's royalty payments and directs it to pay a different royalty value.

*Proposed § 206.260, Washing allowances,* continues a long-standing Department of the Interior policy of allowing deductions for coal preparation costs provided such preparation enhances the value of the coal. Section 206.260 is proposed to continue the policy of granting an allowance for washing coal from Federal or Indian leases to lessees paying royalties under ad valorem lease terms which are subject to the provisions of Subpart F. However, if the value determined pursuant to § 206.259 is based on a benchmark that reflects the value of like-quality unwashed coal, then the lessee would not be entitled to an allowance even if it actually incurred washing costs.

Paragraph (a)(1) would limit the washing allowance to 50 percent of the value of coal determined pursuant to § 206.259. Furthermore, it provides that in those instances where the lessee, under any given selling arrangement, can qualify for both a washing and transportation allowance, the total of the coal washing and transportation would be limited to 75 percent of the value of coal for that selling arrangement as determined pursuant to § 206.259.

Paragraph (a)(2) would provide for the MMS Director to approve a greater amount (in excess of the 50 or 75 percent limit contained in paragraph (a)(1)) if the lessee submits an application which demonstrates that the higher allowance is warranted and is in the best interests of the lessor. However, MMS believes it would be unreasonable and inappropriate to accept allowances of such a magnitude that the royalty payment would be effectively reduced to zero.

Under § 206.260(b)(1), the cost incurred by the lessee under an arm's-length coal washing contract would be accepted by MMS as the reasonable allowance for coal washing subject to the limitations of paragraph (a)(1). MMS approval of the allowance would not be required before the allowance could be taken. However, prior to or at the time an allowance is taken, the lessee would be required to submit to MMS a completed page one of Form MMS–4292 the same month the allowance first is reported on Form MMS–4014, Report of Sales and Royalty Remittance. This would be a one-time filing effective for the reporting period. The allowance would be denied for any production month for which a Form MMS–4292 is not received by the time the Form MMS–4014 is filed for that production month. Therefore, if a lessee begins incurring washing costs for January coal production pursuant to an arm's-length contract, if it did not submit a Form MMS–4292 until April 15, it would be entitled to an allowance only for March and subsequent months' production for a 12-month reporting period. No allowance would be permitted for January and February, and the lessee would be required to refund, with interest, any allowance that was taken.

The procedure for claiming a washing allowance under paragraph (b) is proposed to be a two-step process. The first step is the deduction of an estimated allowance. The estimated allowance is the dollar-per-ton amount the lessee expects to incur for washing during the current 12-month period. The estimated washing allowance would become effective beginning with the month the lessee first reports a washing allowance deduction on Form MMS–4014, Report of Sales and Royalty Remittance (provided the lessee also submitted a completed page one of Form MMS–4292). The estimated allowance would continue for 12 months or until the arm's-length contract terminates or in amended, whichever is earlier (the reporting period). The second step of the two-step process occurs when the initial reporting period ends. Under paragraphs (b)(1)(ii) and (c)(1), the lessee would submit a completed page one of Form MMS–4292 within 90 days after the end of the previous reporting period. This submittal would contain the actual costs for coal washing incurred during the previous 12 months. If coal washing is continuing, then this submittal would also contain an estimate of the costs to be incurred for the next 12 months. The estimated coal washing allowance could not be greater than the previous 12 months' actual coal washing costs, unless MMS approves a higher estimate upon written request from the lessee. Any differences between estimated and actual coal washing allowances would be reflected in an amended Form MMS–4014, Report of Sales and Royalty Remittance. For example, if a lessee has its coal washed under an arm's-length contract in January, the estimated washing allowance would first be reported in February. Form MMS–4292 would also be submitted in February. The estimated allowance is effective beginning January 1, 19X4, and would continue for 12 months. By April 1, 19X5, the lessee would submit Form MMS–4292 showing its actual costs incurred for the period January 1, 19X4, through December 31, 19X4.

Paragraph (b)(2) sets forth the procedures for a lessee to obtain a coal washing allowance when the coal washing is performed under a non-arm's-length contract, or no contract, including those situations where the lessee performs the washing service itself or an affiliate of the lessee performs the washing service. Paragraph (b)(2)(i) would not require prior MMS approval of coal washing costs incurred under non-arm's-length contract or no contract situations. Paragraph (b)(2)(ii) proposes a procedure similar to that previously discussed for arm's-length allowances. The non-arm's-length or no contract allowance determination is also a two-step process, consisting of a submittal of an estimated washing allowance for the current 12-month period and a submittal of the actual washing allowance within 90 days after the end of the 12-month period containing the actual costs incurred during the previous 12-month period. MMS approval is not required prior to commencing non-arm's-length or no contract washing deductions. However, MMS must receive a completed Form MMS–4292 and all available data to support its proposed estimated allowance in the same month the lessee first reports its allowance on Form MMS–4014, Report of Sales and Royalty Remittance (the filing is effective for all months in the reporting period), or the allowance will be denied until the Form is received. Within 90 days following the end of the 12-month period, the lessee would submit Form MMS–4292 and all available data supporting its actual costs incurred during the previous 12-month period.

Paragraph (b)(2)(iii) would provide that MMS will monitor, review, and audit coal washing allowances. If MMS determines that the lessee has incorrectly determined the estimated or actual allowance, MMS could direct the Lessee to adjust it. A Lessee also may request a coal washing allowance determination from MMS. If, as the result of an MMS action or a Lessee's request, MMS determines a different allowance than the one the Lessee has taken, then the lessee shall be required to adjust the allowances reported on its Form MMS–4014 for months in the

reporting period after the approval is received. Adjustments to estimated costs in months preceding the approval would not be required to be made until the lessee determines its actual costs. Then it would adjust from the originally reported estimate to the actual for that month as determined by the MMS. This will avoid requiring lessees to adjust Form MMS–4014 twice for the months preceding approval. However, the rules would authorize MMS to require immediate adjustment of the pre-determination months when justified.

Paragraph (v) would enumerate the types and nature of costs which MMS considers acceptable in determining a non-arm's-length or no contract washing allowance. The categories of expenses are operating and maintenance expenses, overhead, depreciation, and a return on undepreciated capital investment (or, alternatively, a return on the initial capital investment with no allowance for depreciation—see discussion below). Paragraphs (b)(v)(A) and (B) provide a list of operating and maintenance expense categories which MMS considers typical operating or maintenance expenses. Paragraph (b)(v)(C) would provide for overhead to be included as a washing cost, providing that the overhead is directly attributable or allocable to the operation or maintenance of the washing system.

MMS is proposing two alternatives regarding return on capital investment. Under alternative 1, paragraph (b)(v)(D) would provide for two financial depreciation methods: Straight-line depreciation and units of production depreciation. Accordingly, depreciation would be based on the useful life of the equipment or the life of the reserves the wash plant services. Also, salvage value must be observed and depreciation limited to that salvage value.

MMS is also proposing that the establishment of a washing facility depreciation schedule would not be altered by virtue of a change in ownership. If, for example, a wash plant has a depreciation schedule of 20 years and has been depreciated for 10 years by the first owner and then sold, the new second owner would be entitled to the remaining 10 years' depreciation based on the original capitalized cost. MMS specifically would like comments on whether or not this no-recapitalization provision should be adopted if alternative 1 is adopted.

As alternative 2, MMS is proposing, in paragraph (b)(v)(D), to disallow any cost deduction for depreciation. Instead, each year MMS would allow an amount equal to the initial capital investment in the washing facilities multiplied by a floating rate of return, as discussed below. Alternative 2, if adopted, would be supplemental to alternative 1 and is proposed to apply prospectively only to new facilities or newly acquired facilities. MMS would like commenters to address the feasibility of alternative 2.

Paragraph (b)(v)(E) would establish the rate of return to be applied to either the undepreciated wash plant capital investment under alternative 1, discussed above, or the initial wash plant capital investment under alternative 2. The rate of return is proposed to be determined by the Moody Aaa corporate bond rate as published in Moody's Investors Services, Inc. *Moody's Bond Records* on the first business day of the reporting period for which the allowance becomes applicable. At the beginning of each subsequent 12-month period that follows, the rate would be determined.

MMS would like commenters to address whether a specific rate of return for each lessee should be used and how such a rate of return would be calculated.

Paragraph (c) sets forth the reporting requirements subsequent to the initial reporting period. Paragraph (c)(1) would require page one of Form MMS–4292 to be submitted within 90 days after the end of the previous reporting period for arm's-length washing contracts. For non-arm's-length or no contract situations, completed Form MMS–4292 and all supporting information would be required to be submitted within 90 days following the end of the reporting period, unless MMS approves a longer period. Regardless of whether coal washing is conducted under arm's-length contract, non-arm's-length contract, or no contract conditions, if Form MMS–4292 and accompanying supporting information is not received within the 90-day timeframe, then the new allowance for the succeeding reporting period will not be effective until the first day of the month in which a proper Form MMS–4292 is received by MMS and will be applicable to Forms MMS–4014 received after that date. Section 206.260(c)(2) provides for MMS to make a change in the reporting cycle of submission of Form MMS–4292, and, if necessary, any accompanying data. This provision is intended to allow MMS the flexibility to equalize its workload in order to more effectively administer washing allowances. Nothing in this subsection should be construed to alter any of the royalty reporting and payment requirements contained either in this Part or in other Parts of 30 CFR.

Section 206.260(c)(3) would provide that washing allowances under either arm's-length, non-arm's-length, or no contract situations are to be reported on a separate line on Form MMS–4014, Report of Sales and Royalty Remittance. Unless otherwise directed and approved by MMS, lessees are not to report values that are net of washing allowances.

Paragraph (d) would specify the adjustment procedure when actual allowances are different from the estimates. If the lessee overestimated costs, the lessee would be required to pay the additional royalty plus interest. For underestimates, lessees would be allowed a credit without interest. The actual procedures to adjust Form MMS–4014 will be included in the MMS Payor Handbook.

Paragraph (e) is proposed to allow the use of the same administrative or computation procedures contained in § 206.260 to determine other washing costs when valuing coal under a net-back procedure or other valuation procedure contained in Subpart F of Part 206.

*Proposed § 206.261, Allocation of washed coal,* is applicable to both cents-per-ton leases and ad valorem leases which produce coal that is subjected to washing. This proposed section instructs lessees on procedures of how to properly allocate washed coal tonnages back to the leases from which the coal was originally produced. The proper allocation of washed coal is essential to the proper reporting and paying of royalties.

*Proposed § 206.262, Transportation allowances,* would grant an allowance to lessees when it is necessary to transport coal from the lease or mine to a wash plant remote from the lease or mine or to a point of sale remote from the lease or mine. The proposed regulation is a continuation of long-standing MMS policy; however, there has never been explicit guidance or regulation pertaining to coal transportation allowances. MMS has received several inquiries in the past questioning what conditions must be present in order to obtain approval to deduct a transportation allowance. The following explanation is not intended to be conclusive or exhaustive but is intended to convey the general criteria MMS would apply to determine whether a transportation allowance is warranted. First, transportation to a point of sale on the lease or on the mine property or to a point of sale in the vicinity of, or adjacent to the leases or mine, does not qualify for transportation allowances. Second, if the transportation is part of what MMS considers normal mine operation, then no transportation costs are allowed. Normal mine operation is considered to

include transportation on or about the mine. This includes transportation in the pit, from the pit(s) to the load-out silos or tipples, or to crushers or other coal preparation facilities including wash plants located on or near the mine.

A lessee would be entitled to a transportation allowance only if the value for the coal has been determined pursuant to § 206.259 at a point remote from the lease or mine. Thus, for example, if value has been determined based upon spot prices for coal at the mine, the lessee would not be entitled to a further deduction from that value. A transportation allowance would be allowed, however, in those circumstances where value is determined based upon the gross proceeds for the sale of coal at a sales point remote from the lease.

Paragraph (b)(1) proposes to limit the transportation allowance to 50 percent of the value of coal determined pursuant to § 206.259. Paragraph (b)(1) also contains a limitation on the amount of total deduction by selling arrangements for lessees that qualify for both washing and transportation allowances. As stated previously in the discussion of § 206.260(a) (washing allowances), total deductions are proposed to be limited to 75 percent of the value of coal determined pursuant to § 206.259. The 50 and 75 percent limitations contained in paragraph (b)(1) are not absolute. Paragraph (b)(2) provides for the MMS Director to approve an allowance in excess of those limits if the lessee submits an application which demonstrates that the higher allowance is warranted and is in the best interests of the lessor.

Paragraph (c) would require that the per ton transportation costs be determined based on the full tonnage transported. Therefore, if unwashed coal is transported to a wash plant remote from the mine, the transportation cost would be determined on the total weight of material transported, including the impurities. However, paragraph (c) further provides that MMS will not participate in the costs of transporting impurities.

Paragraph (d) provides for the determination of transportation allowances under arm's-length and non-arm's-length or no contract situations, including those situations where the lessee performs the transportation service. This section is virtually the same as § 206.260(b) (washing allowances). Therefore, the preamble discussion for that section applies here.

Paragraph (e) contains reporting requirements parallel to those provided for washing allowances at § 206.260(c). The earlier discussion provided herein with regard to washing allowances is equally applicable to this subsection. The same applies to §§ 206.262(f) and (g).

*Proposed § 206.263, Contract submission,* would provide that lessees must submit to MMS, upon request, coal sales contracts, supply agreements, contract amendments or any other documents affecting gross proceeds, whether or not related to the sales contract. This section would further require the lessee to certify, in writing, that all requested information has been provided. If a lessee falsely certifies, it will be subject to penalties and other sanctions pursuant to applicable laws and regulations. Also, under this section, MMS would specify whether the information is to be sent to MMS or made available at the lessee's office.

This section also would require lessees to include, as part of their submittal, any other contracts, agreements, or documents that affect the gross proceeds accruing to the lessee from the sale of coal. For example, if the lessee agrees to sell coal to a utility and, as part of the agreement, the utility provides mining equipment at a reduced price, that price reduction is part of the consideration for the sale of the coal. As such, the lessee is obligated to submit information about the mining equipment agreement as well as any other sales-related documents.

Paragraph (b) would provide that lessees and other payors would be required to advise MMS whether the contract is arm's-length or non-arm's-length. A definition of arm's-length contract is proposed to be included in § 206.251. This designation is important because, for ad valorem leases, it would determine which valuation method would be used. It is not proposed to make this designation part of the certification.

The lessee's designation of a contract as arm's-length would not be conclusive. Paragraph (c) provides that MMS may later audit the contract to ascertain that the lessee's designation of the contract as arm's-length meets the criteria of MMS' arm-length contract definition.

## IV. Procedural Matters

*Executive Order 12291*

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

*Regulatory Flexibility Act*

Because this rule primarily consolidates and streamlines existing regulations into a single part for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this proposed rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, et seq).

*Paperwork Reduction Act of 1980*

Lessee reporting requirements remain essentially the same. Coal washing and transportation allowance applications will be required to be submitted annually for review by MMS. Also, upon the request of MMS, lessees will be required to submit their coal sales contracts.

The information collection requirements contained in §§ 206.256, 206.260, 206.262, and 206.263 of this rule have been submitted for approval to the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The collection of this information will not be required until it has been approved by OMB.

*National Environmental Policy Act of 1969*

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

*Public Comment Procedures*

A. Written Comments

You are invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m. of the day specified in the **"DATES"** section to the appropriate address indicated in the **"ADDRESSES"** section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Coal Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room E104, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. MMS reserves the right to determine the confidential

status of the information or data and to treat it according to its independent determination.

B. Public Hearing

1. *Procedure for requests to make oral presentations:* The time and place for the hearing are indicated in the **"DATES"** and **"ADDRESSES"** sections of the preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation. The request should contain a business telephone number and also a telephone number where you may be contacted during the day prior to the hearing. If you are selected to be heard at the hearing, you will be notified before 4:30 p.m. of the day prior to the hearing. You will be required to submit 50 copies of your statement to MMS at the address indicated in the **"ADDRESSES"** section of the preamble by 4:30 p.m. [To be determined].

2. *Conduct of the hearing:* MMS reserves the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

A Department of the Interior official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer at the hearing.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the opening of the hearing.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the MMS and made available for inspection in Room E104, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

**List of Subjects**

*30 CFR Part 202*

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*30 CFR Part 203*

Coal, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources.

*30 CFR Part 206*

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources.

*30 CFR Part 212*

Coal, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*30 CFR Part 218*

Coal, Continental shelf, Electric funds transfers, Geothermal energy, Government contracts, Indians-lands, Minerals royalties, Oil and gas exploration, Public lands-mineral resources.

*43 CFR Part 3480*

Government contracts, Intergovernmental relations, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: December 23, 1986.

**J. Steven Griles,**

*Assistant Secretary—Land and Minerals Management.*

**TITLE 30—[AMENDED]**

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, 212, and 218 are proposed to be amended as follows:

**PART 202—[AMENDED]**

30 CFR Part 202 is amended as follows:

1. The authority citation for Part 202 is revised to read as follows:

**Authority:** 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Subparts E, F, G, and H of Part 202 are revised to read as follows:

**Subpart E—Solid Minerals, General—[Reserved]**

**Subpart F—Coal**

**Subpart G—Other Solid Minerals—[Reserved]**

**Subpart H—Geothermal Resources—[Reserved]**

3. A new Subpart I is added to read "Subpart I—OCS Sulfur—[Reserved]."

4. Section 203.200(d) under Subpart E of Part 203 is redesignated as a new § 202.250 under Subpart F of Part 202.

5. 30 CFR Part 202 is amended by revising newly redesignated § 202.250 to read as follows:

**§ 202.250 Overriding royalty interest.**

All overriding royalty interests, production payments, or similar interests created under Federal coal leases shall be subject to the provisions of 43 CFR Group 3400.

**PART 203—[AMENDED]**

30 CFR Part 203 is amended as follows:

1. The authority citation for Part 203 is revised to read as follows:

**Authority:** 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Subparts E, F, G, and H of Part 203 are revised to read as follows:

**Subpart E—Solid Minerals, General—[Reserved]**

**Subpart F—Coal**

**Subpart G—Other Solid Minerals—[Reserved]**

**Subpart H—Geothermal Resources—[Reserved]**

3. A new Subpart I is added to read "Subpart I—OCS Sulfur—[Reserved]."

**§ 203.200 [Amended]**

4. Paragraphs (c), (e), (f), (g), (h), (i), (j), and (k) of § 203.200 are removed.

5. Paragraphs (a), (b), and (d) of § 203.200 are redesignated as new §§ 203.250, 218.201, and 202.250, respectively. Titles of the new sections are:

| Sec. | |
|---|---|
| 203.250 | Advance royalty |
| 218.201 | Royalty payment |
| 202.250 | Overriding royalty interest |

6. 30 CFR Part 203 is amended by inserting a new § 203.251 into Subpart F (formerly Subpart E) to read as follows:

**§ 203.251 Reduction in royalty rate or rental.**

An application for reduction in coal royalty rate or rental shall be filed and processed in accordance with 43 CFR Group 3400.

## PART 206—[AMENDED]

30 CFR Part 206 is amended as follows:

1. The authority citation for Part 206 is revised to read as follows:

**Authority:** 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Subparts E, F, G, and H of Part 206 are revised to read as follows:

### Subpart E—Solid Minerals, General—[Reserved]

### Subpart F—Coal

### Subpart G—Other Solid Minerals—[Reserved]

### Subpart H—Geothermal Resources

3. A new Subpart I is added to read "Subpart I—OCS Sulfur—[Reserved]."

4. Sections 206.300 and 206.301 under Subpart G are redesignated as new §§ 206.350 and 206.351 under new Subpart H, respectively.

5. 30 CFR Part 206 is amended by adding §§ 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257, 206.258, 206.259, 206.260, 206.261, 206.262, 206.263, and 206.264 to newly redesignated Subpart F (formerly Subpart E) to read as follows:

### Subpart F—Coal

Sec.

206.250 Purpose and scope.
206.251 Definitions.
206.252 Information collection.
206.253 General royalty management responsibilities of MMS.
206.254 General royalty obligations of the lessee.
206.255 Coal subject to royalties—general provisions.
206.256 Quality and quantity measurement standards for reporting and paying royalties.
206.257 Point of royalty determination.
206.258 Valuation standards for cents-per-ton leases.
206.259 Valuation standards for ad valorem leases.
206.260 Washing allowances.
206.261 Allocation of washed coal.
206.262 Transportation allowances.
206.263 Contract submission.
206.264 In situ and surface gasification and liquefaction operations.

**§ 206.250 Purpose and scope.**

(a) This subpart prescribes the procedures to establish the value, for royalty purposes, of all coal production from Federal and Indian Tribal and allotted leases (except leases on the Osage Indian Reservation).

(b) If the specific provisions of any statute or treaty, or any coal lease subject to the requirements of this Part, are inconsistent with any regulation in this Part, then the lease, statute, or treaty provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to the Minerals Management Service (MMS) are subject to later audit and adjustment.

**§ 206.251 Definitions.**

(a) *Ad valorem lease* means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the production.

(b) *Allowance* means an authorized, or an MMS-accepted or -approved deduction in determining value for royalty purposes.

(1) *Coal washing allowance* means an allowance for the reasonable, actual costs incurred by the lessee for coal washing, or an MMS-accepted or -approved deduction for the costs of washing coal, determined pursuant to this subpart.

(2) *Transportation allowance* means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale remote from the lease or mine, or an MMS-accepted or -approved deduction for costs of such transportation, determined pursuant to this subpart.

(c) *Area* means a geographic region in which coal has similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

(d) *Arm's-length contract* means a contract or agreement between independent, nonaffiliated persons. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person, or if one person owns an interest (regardless of how small), either directly or indirectly, in another person.

(e) *Audit* means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal or Indian leases. The term audit includes, but is not limited to, audit activities related to Federal leases located within the boundaries of any State which has entered into a cooperative agreement with MMS under the provisions of sections 202 or 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732 or 1735), audit activities related to leases located on Indian lands, and the review and resolution of exceptions processed by any accounting systems maintained by the MMS. Audits may also be conducted in response to irregularities identified by BLM, MMS, BIA or a State or Indian Tribe in the performance of production verification.

(f) *BIA* means the Bureau of Indian Affairs of the Department of the Interior.

(g) *BLM* means the Bureau of Land Management of the Department of the Interior.

(h) *Coal* means of all ranks from lignite through anthracite.

(i) *Coal washing* means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations such as flotation; air, water, or heavy media separation; drying; and related handling (or combinations thereof).

(j) *Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

(k) *Gross proceeds (for royalty payment purposes)* means the total monies and other consideration paid to a coal lessee, or monies and other consideration to which such lessee is entitled, for the disposition of coal. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, storing, mixing, loading, treatment with substances including chemicals or oil, and other preparation of the coal to the extent that the lessee is obligated to perform it at no cost to the Federal Government or Indian owner. Gross proceeds, as applied to coal includes: Payments or credits for advanced prepaid reserve payments subject to recoupment through reduced prices in later sales; advanced exploration or development costs that are subject to recoupment through reduced prices in later sales; take-or-pay payments; and reimbursements, including but not limited to, reimbursements for royalties, taxes or fees, [provided, however, that gross proceeds shall not include reimbursements for Federal black lung taxes, or abandoned mine lands fees

authorized by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq.]. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation.

(l) *Indian allottee* means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

(m) *Indian tribe* means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held by the United States in trust or which is subject to Federal restriction against alienation.

(n) *Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal—or the land area covered by that authorization, whichever is required by the context.

(o) *Lessee* means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has assumed an obligation to make royalty or other payments required by the lease. This includes all persons who have an interest in a lease as well as an operator or other payor who has no interest in the lease but who has assumed the royalty payment responsibility.

(p) *Like-quality coal* means coal which has similar chemical and physical characteristics.

(q) *Marketable condition* means coal which is sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a typical sales contract for that area.

(r) *Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

(s) *Net-back method* means a procedure for valuing coal at the lease or mine when a sale has taken place downstream from the lease or mine. The procedure involves working back from the sales point to arrive at the value at the point of measurement for royalty purposes. Consideration is given to costs incurred in the transportation, handling, washing, etc., necessary to get the coal to the point of sale.

(t) *Net output* means the quantity of washed coal that a washing plant produces.

(u) *Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture.

(v) *Selling arrangement* means a unique level of subaccounting required by MMS's Auditing and Financial System (AFS).

(w) *Spot sales agreement* means any sales transaction where planned or actual deliveries span a short period of time, usually not exceeding one year.

(x) *Take-or-payment* means any payment received by the lessee under a "take-or-pay" clause in its sales contracts. Such clauses normally require the purchaser to take, or, failing to take, to pay for a minimum contracted volume or other measure of coal. Under such a clause, the purchaser may have the right to take coal paid for (but undelivered) in succeeding years.

**§ 206.252 Information collection.**

The information collection requirements contained in Subpart F of Part 206 are being submitted for approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The information collection OMB clearance numbers are requested for the following:

| Information collection | OMB No |
|---|---|
| Requirement for submission of coal quality and quantity information under § 206.256. | 1010- XXXX |
| Requirement for submission of coal sales contracts under § 206.263. | 1010- XXXX |
| Requirement for submission of coal washing allowance reports under § 206.260. | 1010- XXXX |
| Requirement for submission of coal transportation allowance reports under § 206.262. | 1010- XXXX |

The information is being collected by the Department of the Interior to meet its congressionally mandated responsibilities relating to Federal and Indian mineral royalty management. The information will be used to determine whether royalty payments represent the proper values for royalty purposes for minerals used or sold from Federal and Indian lands and to assure that proposed deductions from royalty payments are acceptable.

**§ 206.253 General royalty management responsibilities of MMS.**

It is the responsibility of MMS to:

(a) Obtain lessee reports of coal lease production, quantities, and qualities of coal lease products sold, reports of rentals and royalties due, and related matters;

(b) Collect and record rentals and royalties due from, and paid by, lessees;

(c) Process rental and royalty refunds;

(d) When necessary, obtain copies of lessee contract (including contract updates and amendments), sales agreements, coal washing agreements, coal transportation agreements, publicly available prices, and other royalty valuation records when needed by MMS to assure that royalties are properly determined;

(e) Safeguard all proprietary information and records submitted to MMS by the lessee pursuant to lease terms and regulations, and to maintain the confidentiality of any financial information and/or trade secrets which may come into its possession or about which it may gain knowledge;

(f) Promptly deposit rentals and royalties in the U.S. Treasury and/or Tribal or allottee account; and

(g) Audit the records of the lessee to determine that royalties have been paid properly to the Federal Government and Indian lessors.

**§ 206.254 General royalty obligations of the lessee.**

The lessee is required among other things to:

(a) Properly handle and protect coal;

(b) Place coal in marketable condition at no cost to the lessor;

(c) Accurately measure production, properly maintain it in inventory, and dispose of it in a manner beneficial to the public or Indian Tribe's or allottee's interest;

(d) Maintain accurate records of production and sales;

(e) Maintain copies of all contracts, sales agreements, washing or transportation agreements, and other records that support the prices used in valuing coal for royalty purposes. Copies of these contracts, etc., are to be made available to MMS either in the lessee's offices during normal office hours or provided to MMS in accordance with this Part at such time and in such manner as may be requested by the Department of the Interior;

(f) Make timely rental and royalty payments;

(g) Make timely reports on production and sales quantities and qualities; and

(h) Properly value production and correctly pay royalties.

**§ 206.255 Coal subject to royalties—general provisions.**

(a) All coal (except coal unavoidably lost as determined by BLM pursuant to 43 CFR Group 3400) produced from a Federal or Indian lease subject to this Part is subject to royalty. This includes coal used by the lessee on lease or off lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate

specified in the lease are to be paid on the amount of compensation which is received.

(c) In the event waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time of recovery. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or strip mining method. Coal in waste pits or slurry ponds initially mined from Federal or Indian leases shall be allocated to such leases regardless of whether it is stored on Federal or Indian lands. The lessee shall maintain accurate records to determine to which individual Federal or Indian lease coal in the waste pit or slurry pond should be allocated. However, except as provided in § 206.259(f), nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

**§ 206.256 Quality and quantity measurement standards for reporting and paying royalties.**

(a) For leases subject to § 206.259, the quality of coal on which royalty is due shall be reported on the basis of percent sulphur, percent ash and number of British thermal units (Btu's) per pound of coal. Coal quality determinations shall be made at intervals prescribed in the lessee's sales contract. If there is no contract, the lessee shall propose a quality test schedule to MMS. In no case, however, shall quality tests be performed less than quarterly using standard industry recognized testing methods. Coal quality information shall be reported on the appropriate forms required under 30 CFR Part 216.

(b) For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information shall be reported on appropriate forms required under 30 CFR Part 216 and on the Report of Sales and Royalty Remittance, Form MMS–4014, as required under 30 CFR Part 210.

**§ 206.257 Point of royalty determination.**

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of coal in marketable condition at the point of royalty measurement prescribed by BLM.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later sold or otherwise disposed of. MMS may ask BLM or BIA to increase the lease bond to protect the lessor's interest when stockpiles or inventory become excessive as determined by BLM.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is sold or otherwise disposed of, unless otherwise provided for at 30 CFR 206.258(d).

**§ 206.258 Valuation standards for cents-per-ton leases.**

(a) This section is applicable to coal leases on Federal, Indian Tribal, and allotted Indian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal produced from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual volume of coal sold or used, including coal which is avoidably lost as determined by BLM pursuant to 43 CFR Group 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR Subpart 3451 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal which is not sold or used within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of § 206.259, and royalties shall be paid at the royalty rate specified in the readjusted lease.

**§ 206.259 Valuation standards for ad valorem leases.**

(a) This section is applicable to coal leases on Federal, Indian Tribal, and allotted Indian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty as a percentage of the value of production (ad valorem). The value for royalty purposes of coal production from such leases shall be the value of coal determined pursuant to paragraph (b) or (c) of this section, less applicable coal washing allowances and transportation allowances determined pursuant to §§ 206.260 and 206.262.

(b) The value of coal which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing, or which could accrue, to the lessee. Prior MMS approval of this value is not required, although it is subject to monitoring, review, and audit. MMS may direct a lessee to pay royalty based on a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(c)(1) The value of coal production from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with this subsection.

(2) If the reasonable value of the coal cannot be determined pursuant to paragraph (b) of this section, then the reasonable value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the reasonable value shall be based upon the first applicable criterion: (i) The gross proceeds accruing, or which could accrue, to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the lessee's gross proceeds derived from, or paid under, comparable arm's-length contracts for sales, purchases or other dispositions of like-quality coal in the area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of coal, volume, and such other factors as may be appropriate to reflect the value of the production; (ii) the gross proceeds accruing, or which could accrue to the lessee pursuant to a sale under its non-arm's-length contract/or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds under comparable arm's-length contracts between other persons for sales, purchases, or other dispositions of like-quality coal in the area. Comparability shall be determined using the same criteria as specified in paragraph (c)(2) (i) of this section; (iii) prices reported for that coal to a public utility commission, (iv) prices reported for that coal to the Energy Information Administration of the Department of Energy; (v) other relevant matters including, but not limited to, published or publicly available spot market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the salability of certain types of coal; (vi) if a reasonable value cannot be determined using paragraphs (c)(2)(i), (ii), (iii), (iv) or (v) of this section, then a net-back method or any other

reasonable method shall be used to determine value.

(d) Where the value is determined pursuant to paragraph (c) of this section, prior MMS approval is not required. However, a lessee shall notify MMS if the determination of value is pursuant to paragraph (c)(2)(v) or (vi) of this section. The notification shall be by letter to the Associate Director for Royalty Management or his designee. The letter shall identify which valuation method is being used and contain a brief description of the procedure being used. Values are subject to MMS review and audit, and MMS may direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of the regulations. A lessee may request, at any time, a value determination from MMS. The lessee shall submit all available data to support its request. The determination by MMS shall remain effective for the period stated therein.

(e) Value shall be based on the highest price a prudent operator could receive under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing, and signed by all parties to an arm's-length contract, and may be retroactive. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties until monies or consideration resulting from the price increase are received. This subsection applies to price increments only and shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, for a quantity of coal removed or sold from a lease.

(f) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing, or which could accrue, to the lessee, less applicable allowances determined pursuant to §§ 206.260 and 206.262. If take-or-pay payments are a part of gross proceeds, no additional royalty shall be due if make-up deliveries are taken, unless the purchaser is required to pay any additional amount as a result of price increases during the make-up period.

(g) The lessee is required to place coal in marketable condition at no cost to the Federal Government or Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee, to place the coal in marketable condition.

(h) If the lessee requests a value determination from MMS, the lessee may pay royalties based upon a value consistent with the requirements of this section until MMS issues a value determination. After MMS issues a value determination requested by a lessee, or after MMS issues a value determination based upon a review or audit of royalty values, the payor is required to pay any additional royalties due plus interest computed pursuant to 30 CFR 218.200, retroactive to the effective date of the value determination. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit. MMS shall not pay interest on any credit.

(i) Certain information submitted to MMS to support valuation proposals, including transportation and/or processing allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, Title 43 CFR Part 2.

**§ 206.260 Washing allowances.**

(a) (1) For ad valorem leases subject to § 206.259, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to § 206.259 was based upon like-quality unwashed coal. The washing allowance shall not exceed 50 percent of the value of the washed coal, as determined pursuant to § 206.259, by individual selling arrangement. The combined total of the washing allowance (determined according to this section) and the transportation allowance (as determined pursuant to § 206.262), shall not exceed 75 percent of the value, by individual selling arrangement, as determined pursuant to § 206.259, of the coal being washed and transported.

(2) The MMS Director may approve an allowance in excess of the limitations contained in paragraph (a)(1) of this section if the lessee demonstrates that a higher allowance is in the best interests of the lessor. An application for exception shall contain all relevant and supporting data necessary for the MMS Director to make a determination. Under no circumstances shall the Director allow the value for royalty purposes of coal under any selling arrangement to be reduced to zero.

(b) *Determination of washing allowances.* (1) Arm's-length contracts. (i) For coal washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance shall be the reasonable, actual costs incurred by the lessee for washing the coal under that contract, subject to review or audit. Such an allowance shall be subject to the limitations contained in § 206.260(a)(1). MMS approval is not required to deduct washing costs incurred under an arm's-length contract; however, the lessee must notify MMS of its deductions of these costs by submitting a completed page one of Form MMS–4292 the same month the washing allowance first is reported as an allowance on Form MMS–4014, Report of Sales and Royalty Remittance, pursuant to 30 CFR Part 210. This is a one-time filing effective for the entire reporting period. The allowance will be denied for any production month for which a Form MMS–4292 is not received prior to, or at the same time as, the Form MMS–4014 for that month.

(ii) A coal washing allowance determined pursuant to an arm's-length contract shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a washing allowance in accordance with paragraph (b)(1) (i) of this section and shall continue for 12 months, or until the washing contract terminates, whichever is earlier. For each reporting period, the lessee may report an estimated washing allowance deduction. As provided in § 206.260(c), at the end of the 12-month period or at the time the contract terminates, the lessee shall submit page one of Form MMS–4292, containing the actual costs for the previous reporting period and containing the estimated costs for the next reporting period. The estimated coal washing allowance shall not be greater than the reasonable, actual coal washing costs in the previous reporting period, unless MMS approves a higher estimate upon written request from the lessee.

(iii) Where the lessee's payments for washing under an arm's-length contract are not on a dollar value basis, the lessee shall convert whatever consideration is paid to a dollar value

equivalent for the purposes of this section.

(iv) MMS may require that a lessee submit arm's-length washing contracts, operating agreements, and other related documents. Documents requested by MMS shall be submitted within a reasonable time, as determined by MMS.

(2) Non-arm's-length or no contract. (i) If a lessee has a non-arm's-length washing contract or has no contract, including those situations where the lessee performs washing services itself, the washing allowance will be based upon the lessee's reasonable, actual costs. Such an allowance shall be subject to the limitations contained in § 206.260(a)(1). The MMS approval is not required to deduct washing costs incurred under non-arm's-length or no contract situations; however, the lessee must notify MMS of its deductions of these costs by submitting a completed Form MMS–4292 and all data used by the lessee to determine the washing allowance the same month the washing allowance first is reported as an allowance on Form MMS–4014, Report of Sales and Royalty Remittance, pursuant to 30 CFR Part 210. This is a one-time filing effective for the entire reporting period. The allowance will be denied for any production month for which a Form MMS–4292 is not received prior to, or at the same time as, the Form MMS–4014 for that month.

(ii) A coal washing allowance determined pursuant to a non-arm's-length contract or a no contract situation shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a washing allowance in accordance with paragraph (b)(2)(i) of this section and shall continue for 12 months, or until the non-arm's-length contract terminates or the no contract washing terminates, whichever is earlier. For each reporting period, the lessee may report an estimated washing allowance deduction. As provided in § 206.260(c), at the end of the 12-month period, or after the non-arm's-length or no contract washing terminates, the lessee shall submit a completed Form MMS–4292 containing the actual costs for the previous reporting period and all available data to support its allowance. If coal washing is continuing, the lessee shall include on Form MMS–4292 its estimated costs for the next reporting period and all data necessary to support its proposed estimated allowance. The estimates coal washing allowance shall not be greater than the reasonable, actual coal washing costs in the previous reporting period, unless MMS approves a higher estimate upon written request from the lessee.

(iii) MMS shall monitor, review, and audit coal washing allowances and may direct a lessee to adjust an estimated or actual allowance. A lessee also may request a coal washing allowance determination from MMS. If an MMS-determined allowance is different from the lessee's reported allowance, the lessee shall adjust allowances reported after the determination. Adjustments to estimated costs in months preceding the MMS determination shall not be required to be made until the lessee determines its actual costs pursuant to paragraphs (c) and (d) of this section, unless MMS directs otherwise.

(iv) For new washing facilities or arrangements, the lessee's initial Form MMS–4292 shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the coal washing system, or if such data is not available, the lessee shall use estimates based upon industry data for similar washing systems.

(v) The non-arm's-length or no contract washing allowance shall be based upon the lessee's reasonable, actual costs for washing, including operating and maintenance expenses, overhead, [depreciation] and a return on [undepreciated] capital investment. The washing allowance shall be based upon actual costs incurred during the 12-month reporting period.

(A) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(B) Allowable maintenance expenses include: Maintenance of the coal washing system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(C) Overhead directly attributable and allocable to the operation and maintenance of the washing system is an allowable expense. State and Federal income taxes, production taxes or fees such as State severance taxes, or the Abandoned Mine Reclamation Fund fees and royalties are not allowable expenses.

**Alternative 1**

(D) To compute depreciation, the lessee may elect to use either a straight-line depreciation method or a unit of production method based on the life of equipment or the life of the reserves which the washing system services. Once an election is made, the lessee may not alternate methods without MMS approval. A change in ownership of a washing system shall not alter the depreciation schedule established by the original coal washer/lessee for purposes of the allowance calculation. Equipment shall not be depreciated below a reasonable salvage value.

**Alternative 2**

(D) MMS shall allow as a cost an amount equal to the initial capital investment in the washing facilities multiplied by a rate of return determined pursuant to subsection (E). No allowance shall be provided for depreciation.

(E) The rate of return on [undepreciated] capital investment shall be the Moody Aaa corporate bond rate as published by Moody's Investors Service, Inc. in *Moody's Bond Record* on the first business day of the reporting period for which the allowance is applicable. This rate will be effective during the entire reporting period. The rate shall be redetermined at the beginning of each subsequent reporting period.

(c) *Reporting requirements.* (1) After the initial reporting period, for succeeding reporting periods, lessees shall submit Form MMS–4292 (or page one of the Form MMS–4292 for arm's-length washing contracts) on an annual basis. Form MMS–4292 and, if necessary, other supporting information must be received by MMS within 90 days after the end of the previous reporting period, unless MMS approves a longer period. If the Form MMS–4292 is not received timely, then the allowance requested will not be effective until the first day of the month in which the Form MMS–4292 is received, and will be applicable to Forms MMS–4014, Report of Sales and Royalty Remittance, received after that date. The lessee will be required to refund, with interest, any unauthorized allowance which it has taken.

(2) This MMS may establish reporting dates for individual lessees different than those specified in this section in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(3) Washing allowances must be reported as a separate line on the Report of Sales and Royalty Remittance, Form MMS–4014.

(d) *Adjustments.* (1) If actual coal washing costs differ from the estimated cost as reported on the Form MMS–4292, the lessee shall make adjustments on its Forms MMS–4014 in accordance with MMS established procedures. The lessee

must maintain, for audit purposes, a month-by-month reconciliation of the lease account, by AID number, product code, and selling arrangement.

(2) If the actual washing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.200, retroactive to the first month the lessee is authorized to deduct a washing allowance. If the actual washing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(e) *Other washing cost determinations.* The provisions of this section shall apply to the determination of washing costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of washing costs.

**§ 206.261 Allocation of washed coal.**

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was produced.

(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

**§ 206.262 Transportation allowances.**

(a) For ad valorem leases subject to § 206.259, where the value for royalty purposes has been determined at a point remote from the lease or mine, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

(1) Transport the coal produced from a Federal or Indian lease to a sales point which is remote from the lease or mine; or

(2) Transport the coal produced from a Federal or Indian lease to a washing facility when that facility is remote from the mine and, if applicable, from the washing facility to a remote sales point. In-mine transportation costs are not to be included in the transportation allowance.

(b)(1) The transportation allowance shall not exceed 50 percent of the value of the transported coal, as determined pursuant to § 206.259, by individual selling arrangement. The combined total of the transportation allowance (determined according to this section) and the washing allowance (as determined pursuant to § 206.260) shall not exceed 75 percent of the value, by individual selling arrangement, determined pursuant to § 206.259, of the coal being transported and washed.

(2) The MMS Director may approve an allowance in excess of the limitations contained in paragraph (b)(1) if the lessee demonstrates that a higher allowance is in the best interests of the lessor. An application for exception shall contain all relevant and supporting data necessary for the MMS Director to make a determination. Under no circumstances shall the Director allow the value for royalty purposes of coal under any selling arrangement to be reduced to zero.

(c) When lease products contain non-coal products or material such as bone, ash, or other impurities, transportation costs must be allocated among all such products or materials transported. No transportation allowance shall be authorized for the transportation of lease products or materials which are not royalty bearing. Transportation allowances shall be expressed as a cost per ton of coal transported.

(d) *Determination of transportation allowances.*—(1) *Arm's-length contracts.* (i) For coal transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting coal under that contract, subject to review, audit, and adjustment. Such allowances shall be subject to the limitation of § 206.262(b)(1). MMS approval is not required to deduct transportation costs incurred under an arm's-length contract; however, the lessee must notify MMS of its allowance by submitting a completed page one of Form MMS–4293 the same month the transportation allowance first is reported on Form MMS-4014, Report of Sales and Royalty Remittance, filed pursuant to 30 CFR Part 210. This is a one-time filing effective for the entire reporting period. The allowance will be denied for any production month for which Form MMS–4293 is not received prior to, or at the same time as, the Form MMS–4014 for that month.

(ii) A coal transportation allowance determined pursuant to an arm's-length contract shall be effective for a reporting period beginning the month that the lessee first is authorized in accordance with paragraph (d)(1)(i) of this section to deduct a transportation allowance and shall continue for 12 months, or until the transportation contract terminates, whichever is earlier. For each reporting period, the lessee may report an estimated transportation allowance deduction. As provided in § 206.262(e), at the end of the 12-month period or at the time the contract terminates, the lessee shall submit page one of Form MMS–4293, containing the actual costs for the previous reporting period and containing the estimated costs for the next reporting period. The estimated coal transportation allowance shall not be greater than the reasonable, actual coal transportation costs in the previous reporting period, unless MMS approves a higher estimate upon written request from the lessee.

(iii) Where the lessee's payments for transportation under an arm's-length contract are not on a dollar value basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(iv) MMS may require that a lessee submit arm's-length transportation contracts, operating agreements, and other related documents. Documents requested by MMS shall be submitted within a reasonable time, as determined by MMS.

(2) Non-arm's-length or no contract. (i) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services itself, the transportation allowance will be based upon the lessee's reasonable, actual costs. Such an allowance shall be subject to the limitations contained in § 206.262(b)(1). The MMS approval is not required to deduct transportation costs incurred under non-arm's-length or no contract situations; however, the lessee must notify MMS of its deductions of these costs, by submitting a completed Form MMS–4293 and all data used by the lessee to determine the transportation allowances the same month the transportation allowance first is reported as an allowance on Form MMS–4014, Report of Sales and Royalty Remittance, pursuant to 30 CFR Part 210. This is a one-time filing effective for the entire reporting period. The allowance will be denied for any production month for which a Form MMS–4293 is not received prior to, or at the same time as, the Form MMS–4014 for that month.

(ii) A coal transportation allowance determined pursuant to a non-arm's-

length contract or a no contract situation shall be effective for a reporting period beginning the month that the lessee first is authorized in accordance with paragraph (d)(2)(i) of this section to deduct a transportation allowance and shall continue for 12 months, or until the non-arm's-length contract terminates or the no contract transportation terminates, which is earlier. For each reporting period, the lessee may report an estimated transportation allowance deduction. As provided in § 206.262(e), at the end of the 12-month period, or after the non-arm's-length or no contract transportation terminates, the lessee shall submit a completed Form MMS–4293 containing the actual costs for the previous reporting period, and all available data to support its allowance. If coal transportation is continuing, the lessee shall include on Form MMS–4293 its estimated costs for the next reporting period and all data necessary to support its proposed estimated allowance. The estimated coal transportation allowance shall not be greater than the reasonable, actual coal transportation costs in the previous reporting period, unless MMS approves a higher estimate upon written request from the lessee.

(iii) MMS shall monitor, review, and audit transportation allowances and may direct a lessee to adjust an estimated or actual allowance. A lessee may also request a transportation determination from MMS. If an MMS-determined allowance resulting from either a request from the lessee or from an MMS review or audit is different from the lessee's reported allowance, the lessee shall adjust allowances reported after the determination. Adjustments to estimated costs in months preceding the MMS determination shall not be required to be made until the lessee determines its actual costs pursuant to paragraphs (e) and (f), unless MMS directs otherwise.

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4293 shall include estimates of the allowable coal transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data is not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) The non-arm's-length or no contract transportation allowance shall be based upon the lessee's actual costs for transportation, including operating and maintenance expenses, overhead, [depreciation], and a return on [undepreciated] capital investment. The transportation allowance shall be based upon actual costs incurred during the 12-month reporting period.

(A) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(B) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(C) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes, production taxes or fees such as State severance taxes, or the Abandoned Mine Reclamation Fund fees and royalties are not allowable expenses.

**Alternative 1:**

(D) To compute depreciation, the lessee may elect to use either a straight-line depreciation method or a unit of production method based on the life of equipment or the life of the reserves which the transportation system services. After an election is made, the lessee may not alternate methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/leasee for purposes of the allowance circulation. Equipment shall not be depreciated below a reasonable salvage value.

**Alternative 2:**

(D) MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by a rate of return determined pursuant to subsection (E). No allowance shall be provided for depreciation.

(E) The rate of return on [undepreciated] capital investment shall be the Moody Aaa corporate bond rate as published by Moody's Investors Service, Inc. in *Moody's Bond Record* on the first business day of the reporting period for which the allowance is applicable. This rate will be effective during the entire reporting period. The rate shall be redetermined at the beginning of each subsequent reporting period.

(e) *Reporting requirements.* (1) After the initial reporting period, all lessees shall submit Form MMS–4293 (or page one of Form MMS–4293 for arm's-length contracts) on an annual basis. Form MMS–4293 and, if necessary, other supporting information must be received by MMS within 90 days after the end of the previous reporting period, unless MMS approves a longer period. If the Form MMS–4293 is not received timely, then the allowance requested will not be effective until the first day of the month in whch the Form MMS–4293 is received, and will be applicable to Form MMS–4014, Report of Sales and Royalty Remittance, received after that date. The lessee will be required to refund, with interest, any unauthorized allowance which it has taken.

(2) The MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(3) Transportation allowances must be reported as a separate line on the Report of Sales and Royalty Remittance, Form MMS–4014.

(f) *Adjustments.* (1) If actual transportation costs differ from the estimated cost as reported on the Form MMS–4293, the lessee shall make adjustments on its Forms MMS–4014 in accordance with MMS established procedures. The lessee must maintain, for audit purposes, a month-by-month reconciliation of the lease account by AID number, Product Code, and Selling Arrangement.

(2) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.200, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to the determination of transportation costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of transportation costs.

**§ 206.263 Contract submission.**

(a) The lessee and other payors shall submit to MMS, upon request, contracts for the sale of coal from ad valorem leases subject to this subpart. Contracts must be received by MMS within a reasonable period of time, as specified by MMS. Lessees shall include as part of the submittal requirements any contracts, agreements, contract amendments, or other documents which

affect the gross proceeds received for the sale of coal, as well as any other information regarding any consideration received for the sale or disposition of coal which is not included in such contracts. At the time of its contract submittals, the lessee shall certify in writing that it has provided all documents and information which reflect the total consideration provided by purchasers of coal from ad valorem leases subject to this subpart. Information requested under this section shall be available in the lessee's offices during normal business hours or provided to MMS at such time and in such manner as may be requested by authorized Department of the Interior personnel. Nothing in this subsection shall be construed to limit the authority of MMS to obtain or have access to information pursuant to 30 CFR Part 212.

(b) Lessees and other payors shall designate, for each contract submitted pursuant to this section, whether the contract is arm's-length or non-arm's-length.

(c) A lessee's determination that its contract is arm's-length is subject to future audit to verify that the contract meets the criteria of the arm's-length contract definition in § 206.251.

(d) Information required to be submitted under this section which constitutes trade secrets and commercial and financial information which is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the lessee or other payor, except as otherwise provided by law or regulation.

**§ 206.264 In-situ and surface gasification and liquefaction operations.**

If an ad valorem Federal coal lease is developed by in situ or surface gasification or liquefaction technology, the value of production for the purpose of computing royalty shall be determined by MMS.

**PART 212—[AMENDED]**

30 CFR Part 212 is amended as follows:

1. The Authority citation for Part 212 is revised to read as follows:

**Authority:** 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Subparts F and G under Part 212 are revised to read as follows:

**Subpart F—Coal—[Reserved]**

**Subpart G—Other Solid Minerals—[Reserved]**

3. The following subparts are added to Part 212:

**Subpart H—Geothermal Resources—[Reserved]**

**Subpart I—OCS Sulfur—[Reserved]**

**PART 218—[AMENDED]**

30 CFR Part 218 is amended as follows:

1. The Authority citation for Part 218 is revised to read as follows:

**Authority:** 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 218 is amended by revising newly redesignated § 218.201 (formerly § 203.200(b)) to read as follows:

**§ 218.201 Royalty payments.**

Operators/lessees shall submit royalty payments as provided for in the lease and the regulations in this Title. The payment shall be made by the end of the month after the end of the royalty reporting period for which the royalty accrued.

**TITLE 43—[AMENDED]**

For the reasons stated in the preamble, 43 CFR Group 3480 is amended as follows:

1. The authority citation for 43 CFR Part 3480 continues to read as follows:

**Authority:** The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, et seq.); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 471, et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.); and the Freedom of Information Act (5 U.S.C. 552).

2. 43 CFR 3485.2 is amended by removing paragraphs 3485.2(d), 3485.2(e), 3485.2(f), 3485.2(g), 3485.2(h), 3485.2(i), and 3485.2(k), and 3485.2(j) is redesignated to 3485.2(d).

[FR Doc. 87–896 Filed 1–14–87; 8:45 am]

BILLING CODE 4310–MR–M

Federal Register

Thursday
January 15, 1987

Part V

# Department of the Interior

**Minerals Management Service**

**30 CFR Parts 202, 203, 206, 207, 210, and 241**

**Revision of Oil Product Valuation Regulations and Related Topics; Proposed Rulemaking**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Parts 202, 203, 206, 207, 210, and 241

### Revision of Oil Product Valuation Regulations and Related Topics

**AGENCY:** Minerals Management Service (MMS), Interior (DOI).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rulemaking provides for the amendment and clarification of regulations governing valuation of oil for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing oil royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

**DATES:** Comments must be received on or before April 15, 1987. Hearings are scheduled as follows:

1. March 4, 1987, 8:30 AM to 4:00 PM, Denver, Colorado.

2. March 17, 1987, 8:30 AM to 4:00 PM, New Orleans, Louisiana.

**ADDRESSES:** Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado, 80225, Attention: Dennis C. Whitcomb.

The hearings will be held at the following locations:

1. Denver—Sheraton Denver Airport Hotel, 3535 Quebec Street, Denver, Colorado.

2. New Orleans—Airport Holiday Inn, 2929 Williams Boulevard, Kenner, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Whitcomb, (303) 231-3432, (FTS) 326-3432.

**SUPPLEMENTARY INFORMATION:** The principal authors of this proposed rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

#### I. Introduction

On January 9 and 10, 1986, the first meeting of the Royalty Management Advisory Committee (RMAC) was held in Lakewood, Colorado. (See Notice of Meeting, 50 FR 52385, Dec. 23, 1985.) The RMAC, which is composed primarily of representatives from States, Indian Tribes and allottees, and the coal, oil, and gas industry, was charged with the responsibility of advising the Secretary of the Interior about the form and content of changes to Minerals Management Service (MMS) regulations governing the value, for royalty purposes, of coal, oil, and gas production from Federal and Indian leases.

At the first RMAC meeting, the Committee asked the Secretary to withhold promulgation of proposed valuation regulations until the Committee has an opportunity to review the issues and make its recommendations. The Secretary agreed to the request, and in response to the Committee's request, MMS made available to RMAC its latest drafts of regulations governing the valuation of coal, oil, and gas, and those governing transportation and processing allowances. At the same time, MMS made copies of those same draft regulations available to the public (51 FR 4507, Feb. 5, 1986; and 51 FR 7811, March 6, 1986). Public comment on the drafts was requested both in written form and at a public meeting held in Lakewood, Colorado, on March 18 and 19, 1986.

The RMAC formed three working panels to review the draft coal, oil, and gas rules, and the transportation and processing rules related to each product. Between January and October 1986, the various working panels held several meetings to review the draft rules. The working panel meetings were published in the **Federal Register** and the meetings were open to members of the public, many of whom participated actively.

Each of three working panels prepared a detailed set of recommendations to RMAC. These were reviewed at the RMAC meetings held July 28–30, 1986, and October 20–22, 1986. The RMAC was unable to approve the reports of both the oil and the gas panels for transmission to the Secretary, which, by the terms of RMAC's charter, required a two-thirds vote of the Committee membership. The RMAC did approve, for submission to the Secretary, a set of recommendations regarding certain of the provisions contained in the coal valuation regulations.

The MMS representatives were present at, and participated in, all meetings of RMAC and the working panels. As a consequence of the extensive discussion between members of the groups representing the States, Indians, and the industries, and the detailed written recommendations prepared by the working panel's MMS's task of drafting proposed valuation regulations was enhanced significantly. In preparing these proposed regulations, MMS carefully considered all of the discussions that occurred at the various meetings, regardless of whether they were adopted in any of the three working panel reports or by the full Committee. The MMS also considered the written and oral comments from the public on the draft rules and the resolution presented to the Secretary by RMAC. The MMS appreciates the hard work and dedication of a large number of people who were willing to work toward the common goal of clarifying and improving the regulations governing the valuation, for royalty purposes, of coal, oil, and gas production from Federal and Indian leases.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before April 15, 1987. Two public hearings will be held on the dates and at the locations identified in the **DATES AND ADDRESSES** sections of this preamble.

#### II. Purpose and Background

The MMS is proposing to revise the current regulations regarding the valuation of oil to accomplish the following:

1. Clarification and reorganization of the existing regulations at 30 CFR Parts 202, 203, 206, 207, 210, and 241.

2. Creation of regulations consistent with the present organizational structure of the Department of the Interior.

3. Placement of the oil royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

4. Clarification that royalty is to be paid on all consideration received by lessees, less applicable transportation allowances, for production removed or sold from the lease.

5. Creation of regulations to guide the lessee in the determination of allowable transportation costs for oil to aid in the calculation of proper royalty due the lessor.

Structurally, these regulations include the reorganization and redesignation of Parts 202, 203, 206, 207, and 210. Each

part is reorganized by redesignating "Subpart B—Oil and Gas, General" as "Subpart B—Oil, Gas, and OCS Sulfur, General" "Subpart C—Oil and Gas, Onshore" as "Subpart C—Federal and Indian Oil" and "Subpart D—Oil, Gas and Sulfur, Offshore" as "Subpart D—Federal and Indian Gas."

Also, a number of sections would be renumbered and/or moved to a new subpart. In addition, §§ 202.51, 202.54, 202.55, 202.102, 206.101, 206.102, 206.103, 206.104, 206.105, 207.1, 207.4, and 210.55 would be added to the appropriate subparts.

This proposed rule is to be applied prospectively. It would supersede all existing oil royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations Division) orders directives, regulations and NTL's (Notice to Lessees) issued over past years. Specific guidelines governing reporting requirements consistent with the oil valuation regulations will be incorporated into the MMS Payor Handbook subsequent to the issuance of final rulemaking in the **Federal Register**.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these proposed rules.

| Regulation changes | Descriptions |
|---|---|
| I. Redesignations: | |
| 1. Subparts E, F, G, and H of Part 241 are redesignated as Subparts F, G, H, and I respectively. | This administrative action permits the insertion of a new Subpart E-"Solid Minerals, General" in this Part. |
| 2. Sections 202.150, 202.151, and 202.152 are redesignated as §§ 202.100, 202.53, and 202.52, respectively. Section 203.150 is redesignated as § 203.50. Section 206.104 is redesignated as § 202.101. | This administrative action more appropriately locates within 30 CFR the information contained in these sections. |
| 3. Sections 207.3 and 207.4 are redesignated as §§ 207.2 and 207.3 respectively. | This renumbering is required by the deletion of the old §§ 207.1 and 207.2. |
| 4. Sections 210.300 and 210.301 are redesignated as §§ 210.350 and 210.351, respectively. | This action corresponds to the redesignation of Subpart G as Subpart H (see Item 1. above). |
| II. Deletions: | |
| 1. Subpart H-"Indian Lands" is removed from Part 241. | Oil royalty valuation for Indian Lands is now covered by Subpart C—Federal and Indian Oil. |
| 2. Sections 201.100 through 202.103 are removed from Subpart B of Part 202. | These sections cover activities now governed by BLM. |
| 3. Section 203.100 is removed from Subpart C. | This section covers an activity now governed by BLM operations personnel. |
| 4. Section 206.103 is removed from Subpart C of Part 206. | This section has been rewritten and relocated in the regulations as Subparts C and D of Part 206. |
| 5. Sections 207.1, 207.2, 207.5, 207.6 and 207.7 are removed from Subpart A of Part 207 (**Note.**—Sections 207.3 and 207.4 are redesignated as 207.2 and 207.3—see Redesignations). | The subject matter of these Sections is addressed elsewhere in the regulations. They are, therefore, redundant and have been removed to avoid confusion. |
| 6. Sections 210.100 through 210.105, 210.150 and 210.151 are removed from Subpart C and D, respectively, of Part 210. | These requirements of §§ 210.100 and 210.101 are now covered by Part 207, as amended. Sections 210.102, 210.103 and 210.104 are no longer applicable (these forms are no longer in use). § 210.105 has been replaced by new § 210.55. |
| 7. Paragraph 241.100(c) is removed from Subpart C of Part 241. | Section 241.100(c)(1) is no longer applicable (this form is no longer in use). |
| III. Additions: | |
| 1. The following subparts are added to Part 207.<br>Subpart A—General Provisions.<br>Subpart B—Oil, Gas and OCS Sulfur, General [Reserved].<br>Subpart C—Federal and Indian Oil [Reserved].<br>Subpart D—Federal and Indian Gas [Reserved].<br>Subpart E—Solid Minerals, General [Reserved].<br>Subpart F—Coal [Reserved].<br>Subpart G—Other Solid Minerals [Reserved].<br>Subpart H—Geothermal Resources [Reserved].<br>Subpart I—OCS Sulfur [Reserved]. | Separate subparts have been added to Part 207 to make it consistent with other parts of 30 CFR Chapter II and to provide both structure and space for future expansion of this portion of the regulations. |
| 2. Subpart E-Solid Minerals, General [Reserved] is added to Part 241. | This new subpart provides space for future regulations of general applicability to all solid minerals. |
| 3. Sections 202.51, 202.54, 202.55, and 202.102 are added to Part 202. Sections 206.101, 206.102, 206.103, 206.104, and 206.105 are added to Part 206. | Thes new sections provide oil valuation standards and procedures. |
| 4. Sections 207.1 and 207.4 are added to Part 207. | These new sections reference the definitions in Part 206 and set forth certain recordkeeping requirements. |
| 5. Section 210.55 is added to Part 210. | This will replace § 210.105. |
| IV. Amendments: | |
| 1. Parts 202, 203, 206, 210 and 241 are amended by retitling the following Subparts: Subpart B retitled, "Oil, Gas and OCS Sulfur, General".<br>Subpart C retitled "Federal Indian Oil [Reserved]".<br>Subpart D retitled "Federal and Indian Gas [Reserved]". | These subparts have been retitled in order to organize them on a commodity basis (oil vs. gas, etc.) rather than emphasizing location (onshore vs. offshore) as was done formerly. |

MMS believes the proposed valuation methods would yield a reasonable and long-term maximum rate of return for both Federal and Indian leases. The basic premise underlying this methodology is that value is best determined by the interaction of competing market forces—the 7/8ths or 4/5ths owner is going to negotiate the best deal he can to further his own interests, advancing those of the royalty owner as well. This would add certainty to the market place and assure maximum, long-term revenues to all parties concerned. Comments are especially requested on this issue.

The proposed rules in § 206.100 would expressly recognize, however, that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease, statute, or treaty would govern to the extent of the inconsistency. The same principle would apply to Federal leases.

A separate oil definitions section applicable to the royalty valuation of oil is included in this proposed rulemaking in Part 206. All definitions contained under each subpart of Part 206 shall be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241.

## III. Section-by-Section Analysis

*Proposed § 202.51, Scope and definitions,* is an introductory section stating that Part 202 would be applicable to all Federal and Indian leases except leases on the Osage Indian Reservation. This section also references the definitions contained in Part 206.

*Proposed § 202.52, Royalties,* would provide that royalty shall be paid at the rate specified in the lease unless the Secretary reduces, or in the case of OCS leases, reduces or eliminates, the amount of royalty specified in the lease. This regulation also would specify that for all of Subchapter A of Chapter II, the term "royalty(ies)" would be construed to encompass the term "net profit share(s)." This was done to avoid cumbersome wording when having to refer to a royalty payment computation versus a computation of a net profit share payment.

*Proposed § 202.53, Minimum royalty,* states that, for leases which provide for minimum royalty payments, the lessee must pay the minimum royalty as specified in the lease.

*Proposed §§ 202.54 and 202.55* set forth general obligations of the lessee and MMS which are based upon other regulations in Title 30 and Title 43.

*Proposed § 202.100, Royalty on oil,* sets forth general policies regarding what oil is subject to royalty. Proposed § 202.100(a) provides that oil includes condensate separated from gas without processing and that royalty must be paid in value unless MMS requires payment in-kind. Proposed § 202.100(b) states that all oil is subject to royalty except oil lost which BLM or MMS, as appropriate, has determined was unavoidably lost, or oil that is used on, or for the benefit of, the lease. Accordingly, royalty would be due on oil avoidably lost or waste and oil from

which compensatory royalty has been determined to be due as a result of drainage, as determined by BLM for onshore oil and gas operations, or by MMS for offshore oil and gas operations. This is consistent with section 308 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1756). Oil used for the benefit of a lease, which is royalty free, includes oil used in lease equipment on communitized areas or unit areas when the lease is committed to a communitization agreement or unitization agreement and oil used off-lease for the benefit of the producing lease when such off-lease use is permitted by BLM or MMS, as appropriate. If the provisions of any lease are inconsistent with this section, the lease terms would govern. An example is a lease issued pursuant to section 6 of the OCS Lands Act which requires royalty to be paid on lease-use products.

*Proposed § 202.101, Royalty rates on oil; sliding- and step-scale leases (public land only),* formerly § 206.104, would be retained and essentially unchanged. This section is primarily concerned with the determination of countable wells for sliding- and step-scale royalty rate leases. It is anticipated that in the future this regulation will be redesignated in Title 43 of the Code of Federal Regulations because it is operational in nature.

*Proposed § 202.102, Standards for reporting and paying royalties on oil,* sets forth the criteria for reporting the volumes of oil on which royalty is due.

Part 206 of the proposed regulations would include the rules for valuation of oil for royalty payment purposes.

*Proposed § 206.100, Purpose and scope,* is an introductory section stating that Subpart B would be applicable to oil produced from all Federal and Indian leases, except leases on the Osage Indian Reservation. The term "Federal leases" includes leases on the OCS. Paragraph (b) would incorporate the principle that if the specific provisions of any lease, statute, or treaty are inconsistent with the regulations, then the lease, statute, or treaty provisions would govern to the extent of the inconsistency. This principle would apply to existing leases as well as leases executed after the effective date of the regulations. Paragraph (d) would require all oil determined by BLM to have been avoidably lost or wasted from an onshore lease, all oil determined by BLM to have been drained from an onshore lease from which compensatory royalty is due, and all oil determined by MMS to have been avoidably lost from an offshore lease to be valued in accordance with Part 206. Paragraph (e) would express MMS royalty policy that royalties are owed on insurance compensation for oil unavoidably lost.

*Proposed § 206.101, Definitions,* sets forth definitions applicable to the proposed oil valuation regulations. Most definitions applicable to oil are straightforward and self-explanatory. A few definitions, however, require further explanation.

"Arm's-length contract" would be defined as a contract or agreement between independent, nonaffiliated persons. The definition would further provide that two persons are affiliated if one person controls, is controlled by, or is under common control with another person, *or* if one person owns an interest (regardless of the amount), either directly or indirectly, in another person. This definition is important to the regulations because, as is explained below, MMS is proposing that the gross proceeds under an arm's-length contract would be accepted as value. Other valuation criteria would apply to non-arm's-length contracts.

The thrust of the proposed arm's-length contract definition is to include within its coverage only those contracts between persons who have no affiliation or interrelationship of any kind that would cause the contract terms to be suspect as to their arm's-length nature. The MMS recognizes that by excluding from the definition those contracts between persons where one party to the contract has any ownership interest in the other, it is narrowing the universe of contracts which would fall within the scope of the definition.

The MMS has proposed a definition for arm's-length contract that excludes references to such matters as "adverse economic interests" or "free and open markets" because the inclusion of such sometimes subjective concepts would make a lessee's determination that its contract was arm's-length subject to uncertainty. The advantage to the proposed definition is that it would be almost purely objective, and lessees and other payors would have assurance that if they pay royalties on the basis of gross proceeds from an arm's-length contract, the royalty valuation would not later be susceptible to redetermination.

MMS would like commenters to address whether a list of items could be developed which could serve to define an arm's-length contract. Specifically, is there a list of questions which a lessee could answer which would lead to an objective determination of whether it was an arm's-length contract? Possible questions are: (1) Is there a common equity interest between the parties to the contract; (2) is there common control of the parties to the contract; (3) was there a consolidated tax filing by the parties to the contract. MMS would like commenters to address whether the development of such a list is possible and what questions should be part of the list.

The term "gross proceeds" is another term which is important to the regulations because it would be a common royalty value determinant. Gross proceeds is proposed to be defined as the total monies or other consideration paid to an oil and gas lessee, or monies or other consideration to which such lessee is entitled, for the disposition of oil. Gross proceeds would be defined to include payments to the lessee for certain services such as treating, measuring, and field gathering that the lessee is obligated to perform at no cost to the lessor. Gross proceeds also would be defined to include: payments or credits for advanced prepaid reserve payments, or advanced exploration or development costs, subject to recoupment through reduced prices in later sales; and reimbursements where the purchaser reimburses the seller, or pays any costs on behalf of the seller, for such items as severance taxes, harboring fees, or terminalling fees.

The definition is intended to be expansive to ensure that it includes all the benefits flowing from the purchaser to, or on behalf of, the seller for the disposition of the oil.

"Lessee" would be defined as any person to whom the United States, an Indian Tribe, or an Indian allottee, issued a lease, and any person who has assumed an obligation to make royalty or other payments required by the lease. The MMS is proposing to expressly include in the definition all persons who may have to make royalty payments. This would include all persons who have an interest in a lease as well as an operator or other payor, including in some instances the purchaser, who has assumed a royalty payment responsibility by contract or other agreement with the persons who have the actual lease interests. By using this broad definition for the product valuation regulations, it would not be necessary to use multiple terms such as lessee/payor/operator throughout the rules. This definition is not intended to change any contractual obligations under the lease instrument between the lessor and the current or original lease holder, except as it pertains to royalty valuation.

"Marketable condition" would be defined as lease products that are sufficiently free from inpurities and

otherwise in a condition that they will be accepted by a purchaser under a typical sales contract in the field or area. Federal and Indian leases typically require the lessee to pay royalties equal to a specified percentage of the amount or value of production saved, removed, or sold from the leased area. The regulations governing operations require that the lessee place in marketable condition, to the extent economically feasible, all oil, gas, etc., produced from the leased land. See 43 CFR 3162.7–1(a) and 30 CFR 250.42. See also § 206.102(h) of the proposed rules. Court decisions have upheld the principle that the lease operator is obligated to perform necessary field gathering and treatment to develop a product that has been conditioned for market sale (*California Co. v. Udall*, 296 F.2d 384 (D.C. Cir. 1961)).

MMS would like commenters to address whether other terms used in these proposed regulations need to be defined.

*Proposed § 206.102, Valuation standards*, would set forth the valuation standards for all oil from Federal and Indian leases. Value would be determined differently depending upon whether or not the sales agreement is arm's-length.

Paragraph (a) would state expressly that the value, for royalty purposes, of oil production would be the value of the oil determined pursuant to § 206.102, less applicable allowances for transportation (§§ 206.104 and 206.105). However, as explained below, lessees would not be allowed to report a net number for the royalty value (i.e., value less allowances), but would be required to report the allowances separately on the Report of Sales and Royalty Remittance, Form MMS–2014. Lessees would not be entitled to deduct allowances in all situations (see discussion below).

Pursuant to proposed § 206.102(b), the value of oil sold pursuant to an arm's-length contract would be the gross proceeds accruing, or which could accrue, to the lessee. Prior MMS approval of this value would not be required, but it would be subject to monitoring, review, and audit. MMS could direct a lessee to use a different value if it determines that the lessee's reported value was determined to be improper.

Existing rules in 30 CFR 206.103 (onshore) and 30 CFR 206.150 (offshore) provide for the consideration of various criteria by MMS in establishing the value, for royalty purposes. These existing rules provide that gross proceeds is a minimum royalty value. In many instances, however, MMS has determined that the contract price is the royalty value. Therefore, in these situations, the proposed rule would not result in a change in value.

The MMS believes that there are several reasons to conclusively establish gross proceeds under an arm's-length transaction as the value of oil. In the majority of areas there will be more than one purchaser of oil. As with most commodities, each purchaser will set its own price and will seek to fulfill some finite need. A lessee will enter into a contract to sell its oil to a purchaser considering many factors. Of course, the price offered is of paramount importance, but the reliability of the purchaser to provide stability over long periods of time is also an important factor. Because the vast majority of oil is sold by referencing the price to be paid to posted price bulletins, often the lessee may seek the purchaser with the highest posted price. However, that purchaser with the highest posted price may have fulfilled its need for oil and cannot agree to purchase the lessee's oil. Posted prices change periodically, sometimes frequently. The purchaser with the highest posted price today may not maintain that position on subsequent days. Thus, there can be a range of prices that represent what the market will allow, and the prudent lessee will seek a solid and reliable purchaser to assure the most efficient operation of its lease. The lessee would no longer need to be concerned that it may have to pay royalty at a value perhaps considerably higher than the price at which it is selling the oil.

Although the consequence of adopting proposed § 206.102(b) will initially appear to reduce some royalty values, MMS believes that it ultimately will benefit the lessor.

If the disposition of oil production from a Federal or Indian lease is not pursuant to an arm's-length contract, specific criteria must be used to determine the proper royalty value. The valuation process contained in § 206.102(c) would be used when there is no arm's-length contract, including the following circumstances: there is no contract for the sale of oil; oil is used intra-company; oil is avoidably lost, or for any reason improperly disposed of without sale. In these situations, § 206.102(c) of the proposed regulations would require that the value be determined through application of criteria in a prescribed order. In other words, the second criterion would not be considered unless the first criterion could not reasonably be applied. Likewise, the third and fourth criteria would not be considered unless those preceding it were inapplicable, etc.

The first criterion is for the lessee to use its own contemporaneous posted prices used in arm's-length transactions for purchases of significant quantities of similar oil in the field or area. This method allows the lessee certainty in determining its own value for royalties without dependence upon MMS to establish the value. At the same time, it is indicative of the value in the field for similar oil. The MMS believes this method is preferable to the major portion analysis provided for in existing oil and gas regulations which has proved difficult to administer. See 30 CFR 206.103. If the first valuation criterion is inapplicable, the second criterion would apply. This second criterion would be the arithmetic average of all contemporaneous posted prices used in arm's-length transactions for purchases of significant quantities of similar oil from the same field or area.

The MMS believes that the arithmetic average of these prices is a proper indicator of the value of oil and, hence, would be acceptable as value. Also, the arithmetic average price will be less burdensome administratively than a weighted average price where volumetric sales information is difficult to obtain and varies for reasons not value related.

In both the first and second benchmarks, the proposed rule requires that there be "significant quantities of similar oil" purchased pursuant to a posting before that posting could be used to value the lessee's production. The purpose of this phrase is to prevent abuses through application of unusually low or high posting under which little or no oil actually is purchased. The term "significant quantities" also is intended to be in relation to the volumes moving under typical purchases in the field or area. Thus, for a highly productive OCS field, to meet the significant quantities test, a larger volume would be required to be purchased under a posting than in a less productive onshore field.

In the event that there are no price postings applicable to the field or area within which the oil is produced, the third criterion, other contemporaneous arm's-length contracts for purchases of significant quantities of similar oil in the area or nearby areas, would be used. The MMS believes that these prices are the next best indicator of the value of the oil. If there are no other contemporaneous arm's-length contracts which can be used, spot sales postings and any other relevant information pertaining to that oil would be considered.

If a value cannot be determined by using any of the valuation procedures

previously mentioned, a net-back procedure may be used to value the oil by working backwards from the sales price to arrive at a value at the lease. This last benchmark also would authorize the use of any other reasonable method to determine value.

The MMS particulary solicits comments regarding the proposed ordering of valuation benchmarks.

It should be noted here that when a valuation method other than gross proceeds is used for oil sold pursuant to a non-arm's-length contract, such as spot prices, the lessee may not be entitled to a transportation allowance. By way of illustration, if the value of oil is established under § 206.102(c) (iv) based upon spot prices in the field where the lease is located, the value would not be reduced by a transportation allowance even if the lessee actually sold oil on a delivered basis at a point remote from the lease and incurred transportation expenses. The allowance would be inapplicable because the spot prices in this example already reflect value of oil at the lease. However, pursuant to § 206.102(g), the valuation of the lessee's oil based on the spot prices could not be less than the lessee's gross proceeds reduced by the transportation allowance which would be determined considering the costs the lessee actually incurred. Therefore, regardless of the value determined pursuant to the benchmarks, under no circumstances can the value, for royalty purposes, be less than the gross proceeds accruing, or which could accrue, to the lessee, less applicable transportation allowances. This long-standing principle is set forth at § 206.102(g), and is discussed below.

Section 206.102(d) would provide that where value is determined pursuant to the benchmarks, prior MMS approval would not be required. The lessee would be required to retain the necessary data to support its benchmark applications for future review and/or audit. MMS may direct a lessee to use a different value if it determines that the lessee's reported value was determined to be incorrect.

Proposed § 206.102(e) would permit the lessee to pay royalties at its determined valuation. The lessee then would be entitled to a credit, or would be required to pay additional royalty, plus interest, if MMS subsequently determines a different value is applicable. This could occur after MMS reviews and/or audits a value, or in situations where a lessee has requested a value determination from MMS. If the initially reported value was reasonable and in good faith, no penalties for improper reporting would be imposed for initially reporting the lower value, although penalties could be applied for other improper reporting.

Proposed § 206.102(f) would allow the lessee the option to seek value determination from MMS. The lessee would first propose to MMS what that value should be and furnish all supporting documentation for that proposal. The lessee could use its proposed value for reporting purposes until MMS issues a value determination. It would be incumbent upon MMS to expeditiously evaluate that proposal. If the determined value by MMS is different from the lessee's proposed value, the lessee would be required to adjust its reports in accordance with paragraph (e).

Proposed § 206.102(g) restates the long-standing principle that under no circumstances can the value, for royalty purposes, be less than the gross proceeds accruing, or which could accrue, to the lessee, less applicable transportation allowances. The definition of gross proceeds was discussed earlier. It is worth noting again, however, that the gross proceeds accruing to the lessee includes all costs paid by the purchaser of the oil on behalf of the seller. This principle has been upheld in several cases: *Wheless Drilling Co.*, 80 I.D. 599, 13 IBLA 21 (1973); *Amoco Production Co.*, 29 IBLA 234, 236 (1977); *Hoover & Bracken Energies, Inc.*, 52 IBLA 27, 88 ID 7 (1981), *aff'd*, 723 F.2d 1388 (10th Cir. 1983). Thus, if the purchaser reimburses the seller, or pays any costs on behalf of the seller, for such items as severance taxes, gathering, treating, or measuring, then the seller must include those reimbursed costs as part of the gross proceeds upon which the royalty value is determined.

The proposed rules in § 206.102(h) retain the existing requirement that oil operations such as gathering, treating, measuring, and storing are costs incurred to place the oil in marketable condition and are to be borne exclusively by the lessee. Proposed § 206.102(h) also would provide that, where value is based on gross proceeds, the value would be increased to the extent those gross proceeds were reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition. By way of illustration, treating for the removal of basic sediment and water (BS&W) is a cost of making oil marketable that must be borne by the lessee. If the lessee enters into a contract where the purchaser agrees to treat the oil and, hence, the contract price is reduced by one dollar per barrel, MMS would add the dollar per barrel back to the gross proceeds to determine the value.

Proposed § 206.102(i) would expressly impose a diligence requirement on lessees. For example, if, pursuant to an arm's-length contract, a lessee could charge its purchaser a higher price as of a certain date, and if the lessee fails to take proper and timely action to collect that additional money, the lessee would be liable for royalty on the higher value. However, if the purchaser refuses to pay and the lessee attempts to enforce its right, using reasonable, documented measures, it would not be required to pay the additional royalties until the lessee's efforts are successfully concluded. The MMS believes that this regulation reflects the lessee's obligation to operate the lease prudently for the mutual benefit of itself and the lessor.

Section 206.102(i) would not operate to excuse a lessee from paying any royalty if, for example, oil were delivered under a contract and the purchaser failed to pay. In such an event, royalty still would be due on the value of the oil. This section is intended to apply only to the lessee's obligation to pursue price increases to which it may be entitled under its contract.

*Proposed § 206.103, Point of royalty settlement,* would require that royalty be computed on the basis of the quantity and quality of oil in marketable condition at the location approved by MMS for offshore leases or by BLM for onshore leases. In those instances where the lessee sells oil at conditions and/or at locations other than those approved by BLM or MMS, the value of the oil, for royalty purposes, must be determined under the conditions and at the location approved by BLM and MMS. The oil actually measured at the approved point of royalty settlement will be that volume reported to MMS and that volume upon which royalty is to be paid. There would be no credit allowed against this volume or against the royalty value of this volume.

For example, a lessee is required by BLM or MMS, as appropriate, to measure its oil production, for royalty purposes, at a meter on the lease. The lessee's arm's-length contract provides for delivery to the purchaser at a point away from the lease. For whatever reason, the volume of oil measured at the point of delivery under the arm's-length contract is less than the volume of oil measured at the approved point of royalty settlement. In this situation, the gross proceeds accruing to the lessee under its arm's-length contract would be increased, for royalty purposes, to reflect the difference in the volumes measured at the two points. This

increase, for royalty purposes, would be accomplished by multiplying the volumetric difference times the unit price at which the oil was actually sold. Similarly, downward adjustments to gross proceeds would be made where applicable.

As a further example, assume that the gravity of the oil delivered is higher than the gravity as determined at the approved point of royalty settlement because the lessee moved a commingled stream of oil from many leases to the same sales point. The lessee would be selling a product of higher quality and value than that measured at the point of royalty settlement. In such a case, the gross proceeds that would be received by the lessee under its arm's-length contract would be decreased, for royalty purposes, for the amount of the value of the gravity differential. This decrease, for royalty purposes, would be accomplished by adjusting the price at which the oil was sold downwards to reflect the lower gravity as determined at the approved point of royalty settlement. This would be done to assure the lessor a reasonable and correct value based upon the quality and quantity of oil at the point of royalty settlement approved by BLM or MMS, as appropriate. Upward adjustments to the gross proceeds, for royalty purposes, would be made if the gravity differential described above were to be reversed.

It is not anticipated that this provision would have a significant effect on the industry. This is because the oil sales point and the point of royalty settlement coincide in the majority of cases.

*Proposed § 206.104, Transporation allowances—general,* would include the general requirements for the determination of oil transportation allowances. Paragraph (a) would provide that where the value of production has been determined pursuant to § 206.102 at a point remote from the lease, MMS shall allow a deduction for reasonable, actual transportation costs. For onshore leases, this would include the transportation costs from the lease to the point remote from the lease. However, where MMS elects to take its royalty in-kind pursuant to the provisions of 30 CFR Part 208, no transportation allowance would be granted. For offshore leases, the lessee would be entitled to an allowance for the reasonable actual costs of transporting the oil from the lease to the point remote from the lease. For offshore oil taken as royalty in-kind pursuant to 30 CFR Part 209, transportation allowance would be provided for the reasonable, actual costs to transport that oil to the delivery point specified in the royalty-in-kind contract.

Proposed § 206.104(b) would impose a limit on the transportation allowance. The allowance could not exceed 50 percent of the value of the oil determined pursuant to § 206.102. This is the same limitation which exists under current MMS onshore procedures. By way of illustration, a lessee sells oil with a delivery point remote from the lease. The lessee's gross proceeds under an arm's-length sales contract is $12.00 per barrel, and the lessee pays a third party $7.00 per barrel to transport the oil. Proposed § 206.104(b) would limit the transportation allowance to $6.00 per barrel. Under the proposed rules, the MMS Director would be authorized to approve an allowance greater than 50 percent if the lessee demonstrates that a higher allowance is in the best interests of the lessor. The lessee must provide data to support its request to the Director. Under no circumstances could the Director approve an allowance that would result in a value for royalty purposes of zero.

Proposed 206.104(c) would require that transportation costs by allocated among all the products produced from a lease and transported. Specific regulations on this allocaton, and the limitations on the allowance, are discussed in more detail in proposed § 206.105. Paragraph (c) also would require that lessees compute the oil transportation allowance and express it in dollars per barrel.

Section 206.104(d) would provide that if, after an audit, MMS determines that the lessee improperly determined a transportation allowance, then the lessee would be required to pay any additional royalties, plus interest, or would be entitled to a credit without any interest.

*Proposed § 206.105, Determination of transportation allowances,* is the key to the transportation regulations. It would provide the procedure for determining the transportation allowance, which is substantially different depending upon whether the lessee has an arm's-length contract with another party to provide transportation services, or whether the lessee has a non-arm's-length contract or no contract, such as those situations where the lessee has an interest in the pipeline or other transportation system.

Paragraph (a) would apply to arm's-length transportation contract situations. It would provide that the transportation allowance would be the reasonable, actual costs for transportation incurred by the lessee under that contract. Prior MMS approval would not be required before the lessee could deduct the allowance in computing its royalty payments. However, the contract is subject to later review, audit, and adjustment. The lessee, before taking an allowance, would be required to submit to MMS a completed page one of Form MMS–4110 the same month the allowance first is reported on Form MMS–2014, Report of Sales and Royalty Remittance. This would be a one-time filing applicable to all months in the reporting period. The allowance would be denied for any production month for which a Form MMS–4110 is not received by the due date for the Form MMS–2014. Therefore, if a lessee begins incurring transportation costs for January oil production pursuant to an arm's-length contract, and if it did not submit a Form MMS–4110 until April 15, it would be entitled to an allowance only for March and subsequent months' production in the reporting period. No allowance would be permitted for January and February, and the lessee would be required to refund, with interest, any allowance which was taken.

Section 206.105(a)(2) would provide that a transportation allowance determined pursuant to an arm's-length contract would remain effective for a period of 12 months, or until the contract is modified or terminated, whichever is earlier. At that time, the lessee must submit a new page one of Form MMS–4110 in accordance with § 206.105(c).

As discussed earlier regarding proposed § 206.104, the transportation costs must be allocated among all the lease products which are transported.

An arm's-length transportation contract may include more than one liquid product but costs may not be allocated among the products. In such an instance, § 206.105(a)(3) would require the lessee to allocate the costs to each liquid product (including water) in the same proportion as the ratio of the volume of each liquid product to the volume of all liquid products.

Proposed § 206.105(a)(3) would treat water as though it were oil in determining transportation costs per barrel, but a transportation allowance for lease production which is not royalty bearing would not be allowed.

Proposed § 206.105(a)(4) would cover those situations where both gaseous and liquid products are transported in the same transportation system and the costs attributable to each cannot be determined from the arm's-length contract. Proposed § 206.105(a)(4) would require that the lessee propose an allocation procedure to MMS. MMS approval of the cost allocation would be required because a volumeric-based

allocation method may not be appropriate for transporting gaseous and liquid products in the same system. The lessee would use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues a determination on the oil transportation allowance. Proposed § 206.105(a)(4) also would provide for the submission of the lessee's proposal within prescribed timeframes.

In some instances an arm's-length contract for transportation will not require a cash payment by the lessee. Instead, the transporter will be entitled, for example, to retain a percentage of the product. In such an event, § 206.105(a)(5) would require the lessee to determine the dollar value equivalent of those volumes to compute its allowance. Pursuant to § 206.105(a)(6), MMS could require lessees to submit copies of arm's-length transportation contracts and related documents, within the time prescribed by MMS.

If the lessee does not have an arm's-length contract for transporting lease products, but has a non-arm's-length contract or no contract because it has an interest in the pipeline or the transportation system, then the allowance would be based upon the lessee's reasonable, actual costs of transportation.

Paragraph (b)(2) proposes a procedure similar to that previously discussed for allowances for arm's-length situations. The allowance approval for non-arm's-length or no contract situations is also a two-step process, consisting of a submittal of an estimated transportation allowance for the current 12-month period and a submittal of the actual transportation allowance within 90 days after the end of the 12-month period containing the actual costs incurred during the previous 12-month period. MMS approval is not required prior to commencing transportation deductions for non-arm's-length or no contract situations. However, MMS must receive a completed Form MMS–4110 with an estimated allowance in the same month the lessee first reports its allowance on Form MMS–2014, Report of Sales and Royalty Remittance, or the allowance will be denied pending filing of the Form MMS–4110. The filing would be effective for the entire reporting period. Within 90 days following the end of the 12-month period, the lessee would submit Form MMS–4110 with its actual costs incurred during the previous 12-month period and its estimate for the succeeding reporting period. The estimate could not be greater than the actual costs for the preceding period, unless MMS approves a higher estimate upon written request from the lessee.

Proposed § 206.105(b)(3) would expressly state that a lessee may deduct its transportation allowance without MMS pre-approval, subject to review and/or audit by MMS. When necessary or appropriate, MMS could direct a lessee to modify its estimated or actual allowance deduction. This could occur, for example, if a lessee made an obviously exorbitant estimate to reduce its royalty payment obligation.

Proposed § 206.105(b)(4) provides that an estimated allowance may be used by lessees for systems that are in a start-up period.

Proposed § 206.105(b)(5) would specify the types and nature of costs which MMS considers acceptable in determining a transportation allowance for non-arm's-length or no contract situations. The categories of expenses are operating and maintenance expenses, overhead, depreciation, and a return on undepreciated capital investment or, alternatively, a return on the initial capital investment with no allowance for depreciation—see discussion below. Paragraphs (b)(5)(i) and (ii) provide a list of operating and maintenance expense categories which MMS considers typical operating or maintenance expenses. Paragraphs (b)(5)(iii) would provide for overhead to be included as a transportation cost, providing the overhead is directly attributable or allocable to the operation or maintenance of the transportation system.

MMS is proposing two alternatives regarding return on capital investment. Under alternative 1, paragraph (b)(5)(iv) would provide for two financial depreciation methods: straight-line depreciation and unit of production depreciation. Accordingly, depreciation would be based on the useful life of the equipment or the life of the reserves the transportation system services. Also, salvage value must be observed and depreciation limited to that salvage value.

The MMS is also proposing that the establishment of a transportation system depreciation schedule would not be altered because of a recapitalization or a change in ownership. A lessee would not be able to depreciate a transportation system by using a schedule based on replacement costs or any other basis other than actual costs. Similarly, a change in ownership cannot be a basis for a change in the depreciation schedule for allowance purposes. If, for example, a transportation system has a depreciation schedule of 20 years and has been depreciated for 10 years by the first owner and then sold, the new owner would be entitled to the remaining 10 years' depreciation based on the original capitalized cost. MMS specifically would like comments on whether or not this no-recapitalization provision should be adopted if alternative 1 is adopted.

As alternative 2, MMS is proposing in paragraph (b)(5)(iv) to disallow any cost deduction for depreciation. Instead, each year MMS would allow an amount equal to the initial capital investment in the transportation system multiplied by a floating rate of return, as discussed below. Alternative 2, if adopted, would be supplemental to alternative 1 and is proposed to apply prospectively only to a new transportation system or a newly acquired transportation system. MMS would like commenters to address the feasibility of alternative 2.

Paragraph (b)(5)(v) would establish the rate of return to be applied to either the undepreciated capital investment under alternative 1, discussed above, or the initial capital investment under alternative 2, also discussed above. The rate of return is proposed to be determined by the Moody Aaa corporate bond rate as published by Moody's Investors Services, Inc. in *Moody's Bond Record* the first business day of the reporting period for which the allowance becomes applicable. At the beginning of each subsequent 12-month period that follows, the rate would be redetermined.

MMS would like commenters to address whether a specific rate of return for each lessee should be used and how such a rate of return would be calculated.

Proposed § 206.105(b) would set forth the requirement that the lessee allocate the transportation costs to each product transported where more than one product is transported through the same pipeline or transportation system. In such instances, § 206.105(b)(6) would require the lessee to allocate the costs to each liquid product (including water) in the same proportion as the ratio of the volume of each liquid product to the volume of all liquid products. Water would be treated as oil in determining transportation costs per barrel, but a transportation allowance for lease production that is not royalty bearing would not be allowed.

Proposed § 206.105(b)(7) would cover those non-arm's-length and no contract situations where both gaseous and liquid products are transported in the same transportation system. Proposed § 206.105(b)(7) would require that the lessee propose an allocation procedure to MMS. The MMS approval of the cost

allocation would be required because, again, a volumetric-based allocation method may not be appropriate for transporting gaseous and liquid products in the same system. The lessee would use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues a determination on the oil transportation allowance. Proposed § 206.105(b)(8) also would provide for the submission of the lessee's proposal within prescribed timeframes.

Section 206.105(c) sets forth the reporting requirements subsequent to the initial reporting period. Paragraph (c)(1) would require page one of Form MMS–4110 to be submitted within 90 days after the end of the previous reporting period for arm's-length contracts. For non-arm's-length or no contract situations, completed Form MMS–4110 would be required to be submitted within 90 days following the end of the reporting period. Regardless of whether or not oil transportation is conducted under arm's-length contract, non-arm's-length contract, or no contract conditions, if Form MMS–4110 is not received within the 90-day timeframe, then the new allowance for the succeeding reporting period will not be effective until the first day of the month a proper Form MMS–4110 is received by MMS and will be applicable to any Form MMS–2014 received after that date.

Section 206.105(c)(2) provides for MMS to make a change in the reporting cycle for submission of Form MMS–4110. This provision is intended to allow MMS the flexibility to equalize its workload in order to more effectively administer transportation allowances. Nothing in this subsection should be construed to alter any of the royalty reporting and payment requirements contained either in this Part or in other Parts of 30 CFR.

Section 206.105(c)(3) would require that transportation allowances under either arm's-length, non-arm's-length, or no contract situations be reported on a separate line on Form MMS–2014, Report of Sales and Royalty Remittance. Unless otherwise directed and approved by MMS, lessees are not to report values that are net of transportation allowances.

If the actual costs which the lessee computes after the close of the reporting period are different from the estimated costs used to determine the allowance for transportation, proposed § 206.105(d) would set forth the procedure for reporting the adjustments to royalty payments to the MMS. The procedure would be different for onshore than for offshore because of the refund procedures of section 10 of the OCS Lands Act (43 U.S.C. 1801 et seq.). If actual allowances differ from estimated allowances, the lessee would be required to pay additional royalty, with interest, or would be entitled to a credit, without interest.

Proposed § 206.105(e) would provide that, notwithstanding any other provision, no costs that result from payments for actual or theoretical losses would be allowed for oil transportation. Thus, if an arm's-length transportation agreement requires the lessee to pay the transporter for actual or theoretical line losses (either in value or in volume), such costs would be disallowed by MMS. Similarly, even if a transporter's tariff includes a component for actual or theoretical losses, such charges would be disallowed. The valuation regulations for oil in this Part also would disallow such actual or theoretical losses in determining royalty volumes and values. The MMS also would disallow any such costs in non-arm's-length contract or no contract situations.

Paragraph (f) is proposed to allow application of the same administrative or computation procedures contained in § 206.105 to determine other transportation costs when valuing oil under a net-back procedure or other valuation procedure contained in Subpart C of Part 206.

It is the intention of MMS to terminate all existing transportation allowances with the issuance of final rulemaking. This termination would require all lessees to follow the new reporting requirements to be eligible for the deduction of transportation costs for production months subsequent to the effective date of the final rules. Procedures for claiming actual allowances for periods prior to the effective date of the final rules will be provided at the time of final rulemaking.

Changes also are propsed for Part 207. Proposed §§ 207.2 and 207.3 recite the same language, with minor revision, regarding contracts made pursuant to new-form leases and old-form leases, respectively, currently located at 30 CFR 207.3 and 207.4.

*Proposed § 207.4, Contract and sales agreement retention,* requires that copies of all oil and gas sales contracts, posted price bulletins, etc., and copies of all agreements or contracts affecting gross proceeds other than oil and gas sales contracts, posted price bulletins, etc., are to be maintained by the lessee for a period of 6 years, and made available upon request, during normal working hours, to authorized officials. Any oral sales agreements must be placed in written form and retained in the lessee's files. The MMS also could request that the lessee submit requested information to MMS.

## IV. Procedural Matters

*Executive Order 12291*

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian oil royalty valuation regulations; to clarify DOI oil royalty valuation policy and to clarify DOI oil transportation allowance policy; and to provide for consistent royalty valuation policy among all leasable minerals. Because the proposed rule principally consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities.

Lessee reporting requirements will increase approximately $4 million. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

*Regulatory Flexibility Act*

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this proposed rule. Therefore, the DOI has determined that this rule making will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act. (5 U.S.C 601, et seq.).

*Paperwork Reduction Act of 1980*

The information collection and recordkeeping requirements located at §§ 206.105, 207.4, and 210.55 of this rule have been submitted for approval to the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The collection of this information will not be required until it has been approved by OMB.

*National Environmental Policy Act of 1969*

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental

Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

*Public Comment Procedures*

A. Written Comments

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m. of the day specified in the "DATES" section to the appropriate address indicated in the "ADDRESS" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Oil Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room E104, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which is considered to be confidential must be so identified and submitted in writing, one copy only. MMS reserves the right to determine the confidential status of the information or data and to treat it according to its independent determination.

B. Public Hearing

1. *Procedure for requests to make oral presentations:* The time and place for the hearing are indicated in the "DATES" and "ADDRESS" sections of the preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation. The request should contain a business telephone number and also a telephone number where you may be contacted during the day prior to the hearing. If you are selected to be heard at the hearing you will be notified. You will be required to submit 50 copies of your statement to MMS at the address indicated in the "ADDRESS" section of the preamble.

2. *Conduct of the hearing:* MMS reserves the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

A Department of the Interior official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer at the hearing.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the opening of the hearing.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the MMS and made available for inspection in Room E104, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours 8:00 a.m. and 4:00 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

**List of Subjects**

*30 CFR Part 202*

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*30 CFR Part 203*

Coal, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources.

*30 CFR Part 206*

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and Gas exploration, Public lands-mineral resources.

*30 CFR Part 207*

Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

*30 CFR Part 210*

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*30 CFR Part 241*

Administrative practice and procedures, Government contracts, Mineral royalties, Oil and gas exploration penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: December 23, 1986.

**J. Steven Griles,**

*Assistant Secretary—Land and Minerals Management.*

**Subchapter A—Royalty Management**

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, 207, 210, and 241 are proposed to be amended as follows:

*30 CFR Part 202 is amended as follows:*

1. The Authority citation for Part 202 is revised to read as follows:

**Authority:** 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1381 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 202 is amended by revising the Part title and the titles of Subpart B, Subpart C, and Subpart D to read as follows:

**PART 202—ROYALTIES**

**Subpart B—Oil, Gas, and OCS Sulfur, General**

**Subpart C—Federal and Indian Oil**

**Subpart D—Federal and Indian Gas [Reserved]**

3. Sections 202.100, 202.101, 202.102 and 202.103 under Subpart C are removed. Sections 202.150, 202.151 and 202.152 under Subpart D are redesignated as new §§ 202.100 (Subpart C), 202.53 and 202.52 under Subpart B, respectively.

4. In Subpart B, add new §§ 202.51, 202.54, and 202.55, and revise §§ 202.52 and 202.53 (formerly §§ 202.152 and 202.151, respectively) to read as follows:

**Subpart B—Oil, Gas, and OCS Sulfur, General**

§ 202.51 Scope and definitions.
§ 202.52 Royalties.
§ 202.53 Minimum royalty.
§ 202.54 General royalty management responsibilities of MMS.
§ 202.55 General royalty obligations of the lessee.

**Subpart B—Oil, Gas, and OCS Sulfur, General**

**202.51 Scope and definitions.**

(a) This Part is applicable to Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation) and OCS sulfur leases.

(b) The definitions in Subparts C, D, and I of Part 206 of this Title are applicable to Subparts B, C, D, and I of this part.

**202.52 Royalties.**

(a) Royalties on oil, gas and OCS sulfur shall be at the rate specified in the lease, unless the Secretary, pursuant to the provisions of the applicable mineral leasing laws, reduces, or in the case of OCS leases, reduces or eliminates, the amount of royalty or net profit share set forth in the lease.

(b) For purposes of this subpart, the use of the term "royalty(ies)" includes the term "net profit share(s)".

**202.53 Minimum royalty.**

For leases that provide for minimum royalty payments, the lessee shall pay the minimum royalty, as specified in the lease.

**202.54 General royalty management responsibilities of MMS.**

It is the responsibility of MMS to:

(a) Obtain lessee reports of lease production, quantities and qualities of lease products sold, reports of rental and royalties due, and related matters;

(b) Collect and record rentals and royalties due from, and paid by, lessees;

(c) Process rental and royalty refunds;

(d) Obtain copies of lessee contracts (including contract updates and amendments), sales agreements, lease product processing agreements, lease product transportation agreements, publicly available prices and other royalty valuation records when needed by MMS to assure that royalties are properly determined;

(e) Safeguard all proprietary information and records submitted to MMS by the lessee pursuant to lease terms and regulations, and to maintain the confidentiality of any financial information and/or trade secrets which may come into its possession or about which it may gain knowledge.

(f) Promptly deposit rentals and royalties in the U.S. Treasury and/or Tribal or allottee accounts;

(g) Assure prompt disbursement to the Bureau of Indian Affairs (BIA) or Indian Tribes or royalty or rental monies belonging to Indian Tribes or allottees;

(h) Assure prompt disbursement of that portion of Federal royalty and rental monies to which the States are entitled; and

(i) Assure payment of the correct amount of rentals or royalties by maintaining current and understandable royalty and rental regulations, royalty standards and guidelines and by auditing product values and lessee documents, reports and payments.

**§202.55 General Royalty obligations of the lessee.**

The lessee is required among other things to:

(a) Properly handle and protect lease products;

(b) Place lease products in marketable condition at no cost to the lessor;

(c) Accurately measure production, properly maintain it in inventory, and dispose of it in a manner beneficial to the public or Indian Tribe's or allottee's interest;

(d) Maintain accurate records of production and sales;

(e) Maintain copies of all contracts, sales agreements, processing or transportation agreements, and other records that support the valuation of lease products for royalty purposes. Copies of these contracts, etc., are to be made available to MMS either in the lessee's offices during normal office hours or provided to MMS at such time and in such manner as may be requested by the Department of the Interior;

(f) Make timely rental and royalty payments;

(g) Make timely reports on production and sales quantities and qualities; and

(h) Properly value production and correctly pay royalties.

4. 30 CFR Part 202, Subpart C, is amended by revising § 202.100 (formerly § 202.150), by revising § 202.101 (formerly § 206.104), and by adding new § 202.102 to read as follows:

**§202.100 Royalty on oil.**

(a) The royalty on oil, including condensate separated from gas without processing, shall be at the rate established by the terms of the lease. Royalty shall be paid in value unless the MMS requires payment in-kind.

(b) All oil (except oil unavoidably lost or used on, or for the benefit of, the lease including that oil used off-lease for the benefit of the lease when such off-lease use is permitted by the appropriate agency) produced from a Federal or Indian lease to which this part applies is subject to royalty. Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

**§202.101 Royalty rates on oil; sliding and step-scale leases (public land only).**

Sliding- and step-scale royalties are based on the average daily production per well. The BLM authorized officer shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells that yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on a basis of a 28-, 29-, 30-, and 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. The BLM authorized officer will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in the authorized officer's discretion may count as producing any commercially productive well shut in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the BLM authorized officer as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month, in arriving at the number of producing well days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner with approval of the BLM authorized officer.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on a basis of actual producing well days.

(g) For previously producing leaseholds on which no wells were productive during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the BLM authorized officer as need arises.

(i)(1) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

| Well No. | Record | Count (marked X) |
|---|---|---|
| 1 | Produced full time for 30 days | X |
| 2 | Produced for 26 days; down 4 days for repairs. | X |
| 3 | Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 26, 24 hours, pulling rods and tubing. | X |
| 4 | Produced for 12 days; down June 13 to 30. | X |
| 5 | Produced for 8 hours every day (well head). | X |
| 6 | Idle producer (not operated) | |
| 7 | New well, completed June 17; produced for 14 days. | X |
| 8 | New well, completed June 22; produced for 9 days. | |

(2) In this example, there are eight wells on the leasehold, but wells No. 4, 6, and 8 are not counted in computing royalties. Wells No. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5 (the number of wells counted as producing), and dividing the quotient thus obtained by the number of days in the month.

**§ 202.102 Standards for reporting and paying royalties.**

Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F. When reporting oil volumes for royalty purposes, corrections must have been made for basic sediment and water (BS&W) and other impurities. Reported American Petroleum Institute (API) oil gravities are to be those determined in accordance with standard industry procedures after correction to 60 °F.

*30 CFR Part 203 is amended as follows:*

## PART 203—[AMENDED]

1. The Authority citation for Part 203 is revised to read as follows:

**Authority:** 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 203 is amended by revising the titles of Subpart B, Subpart C, and Subpart D to read as follows:

**Subpart B—Oil, Gas and OCS Sulfur, General**

**Subpart C—Federal and Indian Oil—[Reserved]**

**Subpart D—Federal and Indian Gas—[Reserved]**

**§ 203.100 [Removed]**

**§ 203.150 [Redesignated as § 203.50]**

3. Sections 203.100 under Subpart C is removed. Section 203.150 under Subpart D is redesignated as a new § 203.50 under Subpart B.

30 CFR Part 206 is amended as follows:

## PART 206—[AMENDED]

1. The Authority citation for Part 206 is revised to read as follows:

**Authority.** 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 206 is amended by revising the titles of Subpart B, Subpart C, and Subpart D to read as follows:

**Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]**

**Subpart C—Federal and Indian Oil**

**Subpart D—Federal and Indian Gas—[Reserved]**

**§ 206.103 [Removed]**

**§ 206.104 [Redesignated as § 202.101]**

3. Section 206.103 of Subpart C is removed. Section 206.104 under Subpart C is redesignated a new § 202.101 under Subpart C of Part 202.

4. 30 CFR Part 206, Subpart C, is amended by revising § 206.100, and by adding new §§ 206.101, 206.102, 206.103, 206.104, and 206.105 to read as follows:

**Subpart C—Federal and Indian Oil**

§ 206.100 Purpose and scope.
§ 206.101 Definitions.
§ 206.102 Valuation standards.
§ 206.103 Point of royalty settlement.
§ 206.104 Transportation allowances—general.
§ 206.105 Determination of transportation allowances.

**§ 206.100 Purpose and scope.**

(a) This subpart is applicable to all oil produced from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation).

(b) If the specific provisions of any statute or treaty, or any oil and gas lease subject to the requirements of this Part, are inconsistent with any regulation in this Part, then the lease, statute, or treaty provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS are subject to later audit and adjustment.

(d) If BLM determines that oil was avoidably lost or wasted from an onshore lease, or oil was drained from an onshore lease upon which compensatory royalty is due, or MMS determines that oil was avoidably lost or wasted from an offshore lease, then the value of the oil shall be determined in accordance with this Part.

(e) If a leasee receives compensation through insurance coverage or other arrangements for oil unavoidably lost, royalties at the rate specified in the lease are to be paid on the amount of compensation received.

**§ 206.101 Definitions.**

For the purposes of this Part (and Parts 202, 203, 207, 210, and 241 of this chapter:

(a) *Alaska Native Corporation* means any of the twelve Alaska Native Regional Corporations formed pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1606, and which, by virtue of the acquisition of land pursuant to ANCSA, as amended and supplemented, owns all or part of the lessor's interest in a lease or is entitled to distribution of a portion of the revenues derived from a lease.

(b) *Allowance* means an authorized or an MMS-accepted-or -approved deduction in determining value for royalty purposes. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving oil to a point of sale or point of delivery remote from the lease, unit area or communitized area, or an MMS-accepted or -approved deduction for costs of such transportation, determined pursuant to this subpart.

(c) *Area* means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality and economic characteristics.

(d) *Arm's-length contract* means a contract or agreement between independent, nonaffiliated persons. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person, or if one person owns an interest (regardless of

how small), either directly or indirectly, in another person.

(e) *Audit* means a review, conducted in accordance with generally accepted accounting and auditing standards, or royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases. The term audit includes, but is not limited to, audit activities related to Federal leases located within the boundaries of any State which has entered into a cooperative agreement with MMS under the provisions of sections 202 or 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732 or 1735), audit activities related to leases located on Indian lands, and the review and resolution of exceptions processed by any accounting systems maintained by the MMS. Audits may also be conducted in response to irregularities identified by BLM, MMS, BIA or a State or Indian Tribe in the performance or production verification.

(f) *BIA* means the Bureau of Indian Affairs of the Department of the Interior.

(g) *BLM* means the Bureau of Land Management of the Department of the Interior.

(h) *Condensate* means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

(i) *Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

(j) *Field* means a geographic region situated over one or more subsurface oil reservoirs encompassing at least the outermost boundaries of all oil accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective states in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

(k) *Gross proceeds* (for royalty payment purposes) means the total monies and other consideration paid to an oil and gas lessee, or monies and other consideration to which such lessee is entitled, for the disposition of the oil. With respect to oil, gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian owner. Gross proceeds, as applied to oil also includes: payments or credits for advanced prepaid reserve payments subject to recoupment through reduced prices in later sales; advanced exploration or development costs that are subject to recoupment through reduced prices in later sales; and reimbursements, including, but not limited to, reimbursements for harboring or terminalling fees. Tax reimbursements are part of the gross proceeds accuring to a lessee even though the Federal or Indian royalty interest may be exempt from taxation.

(l) *Indian allottee* means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

(m) *Indian Tribe* means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held by the states in trust or which is subject to Federal restriction against alienation.

(n) *Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

(o) *Lease products* means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf, onshore Federal or Indian leases.

(p) *Lessee* means any person to whom the United States, an Indian tribe, or an Indian allottee issues a lease, and any person who has assumed an obligation to make royalty or other payments required by the lease. This includes all persons who have an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

(q) *Like-quality lease products* means lease products which have similar chemical, physical, and legal characteristics.

(r) *Load oil* means any oil which has been used with respect to the operation of oil or gas wells for stimulation, workover, chemical treatment, production or such other purposes as the operator may elect.

(s) *Marketable condition* means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

(t) *Minimum royalty* means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

(u) *Net-back method* means a procedure for valuing lease products at the lease, unit area, or communitized area when the first sale, transfer, or use has taken place downstream from the lease, unit area, or communitized area. The procedure involves working back from the initial sales point or first alternate point which can be used for value determination, to arrive at the value at the point of settlement for royalty purposes.

(v) *Net profit share* (for applicable Federal and Indian lessees) means the specified share of the net profit from production of oil and gas as provided in the agreement.

(w) *Oil* means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil. For purposes of royalty valuation, the term tar sands is defined separately from oil.

(x) *Oil shale* means a kerogen (e.g., fossilized, insoluble, organic material) bearing rock. Oil shale kerogen separation may take place in situ or in surface retorts by various processes. The kerogen upon distillation will yield liquid and gaseous hydrocarbons.

(y) *Outer Continental Shelf (OCS)* means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (34 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(z) *Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture.

(aa) *Posted price* means the price in the field, net of all deductions, as specified in a publicly available posted price bulletin, that a buyer is willing to pay for quantities of oil of marketable quality, free of contaminants not normally associated with such oil.

(bb) *Section 6 lease* means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

(cc) *Selling arrangement* means a unique level of subaccounting required

by MMS's Auditing and Financial System (AFS).

(dd) *Spot sales agreement* means a contract wherein a seller agrees to sell to a buyer a specified amount of oil at a specified price over a fixed period, usually of short duration, which does not require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

(ee) *Tar sands* means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise, or contains a hydrocarbonaceous material and is produced by mining or quarrying.

**§ 206.102 Valuation standards.**

(a) The value, for royalty purposes, of oil production from leases subject to this subpart shall be the value of oil determined pursuant to this section less applicable transportation allowances determined pursuant to this subpart.

(b) The value of oil which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing, or which could accrue, to the lessee. Prior MMS approval of this value is not required, although it is subject to monitoring, review, and audit. MMS may direct a lessee to pay royalty based upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(c) The value of oil production from leases subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following subsections:

(1) The lessee's contemporaneous posted prices used in arm's-length transactions for purchases of significant quantities of like quality oil in the same field or area;

(2) The arithmetic average of contemporaneous posted prices used in arm's-length transactions for purchases of significant quantities of like quality oil in the same field or area;

(3) Other contemporaneous arm's-length contracts for purchases of significant quantities of like quality oil in the same area or nearby areas;

(4) Prices received for spot sales of significant quantities of like quality oil from the same field or area, and other relevant matters, including information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of oil.

(v) If an appropriate value cannot be determined using paragraphs (c)(1) through (4) of this section, a net-back method or any other reasonable method to determine value may be used.

(d) (1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require approval by MMS. However, the lessee shall retain all available data to support its determination of value. Such data shall be subject to review and audit and MMS may direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) A lessee shall notify MMS if it has determined value pursuant to § 206.102(c)(iv)(v). The notification shall be by letter to the Associate Director for Royalty Management or his designee. The letter shall identify which valuation method is being used and contain a brief description of the procedure being used.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee proposes to MMS what the value should be, the lessee may use that value for royalty payment purposes until MMS issues a value determination. The lessee shall submit available data to support its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provision of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing, or which could accrue, to the lessee for production removed or sold from the lease, less applicable transportation allowances determined pursuant to this subpart.

(h) The lessee is required to place oil in marketable condition at no cost to the Federal Government or Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition.

(i) Value shall be based on the highest price a prudent operator can receive under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactive. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties until monies or consideration resulting from the price increase are received. This paragraph applies to price increments only and shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, for a quantity of oil removed or sold from a lease.

(j) Certain information submitted to MMS to support valuation proposals, including transportation and/or processing allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, Title 43 CFR Part 2.

**§ 206.103 Point of royalty settlement.**

(a) (1) Royalties shall be computed on the basis of the quantity and quality of oil at the point of settlement approved by BLM or MMS for onshore and offshore leases, respectively.

(2) If the value of oil determined pursuant to § 206.102 is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as it has been approved by the BLM for onshore leases or MMS for offshore leases, that value shall be adjusted for the differences in quantity and/or quality.

(b) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual

loss that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. There can be no reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this Part. There can be no deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement.

**§ 206.104 Transportation allowances—general.**

(a) Where the value of oil has been determined pursuant to § 206.102 at a point remote from the lease, MMS shall allow a deduction for the reasonable actual costs to:

(1) Transport oil from an onshore lease to the point remote from the lease, provided, however, that for onshore leases, no transportation allowance will be granted for transporting oil taken as royalty-in-kind pursuant to Part 208 of this title; or

(2) Transport oil from an offshore lease to the point remote from the lease, provided, however, that for oil taken as royalty-in-kind pursuant to Part 209 of this Title, a transportation allowance shall be provided for the reasonable actual costs incurred to transport that oil to the delivery point specified in the royalty-in-kind sales contract.

(b)(1) Under no circumstances shall the transportation allowance exceed 50 percent of the value of the oil, as determined pursuant to § 206.102.

(2) The MMS Director may approve an allowance in excess of the limitation contained in paragraph (b)(1) of this section if the lessee demonstrates that a higher allowance is in the best interests of the lessor. An application for exception shall contain all relevant and supporting data necessary for the MMS Director to make a determination. Under no circumstances shall the Director allow the royalty payment for any selling arrangement to be reduced to zero.

(c) Transportation costs must be allocated among all products produced and transported. However, no transportation deduction shall be allowed for products which are not royalty bearing. Transportation allowances for oil shall be expressed as dollars per barrel.

(d) If, after a review and/or audit, it is determined that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

**§ 206.105 Determination of transportation allowances.**

(a) (1) Arm's-length contracts. For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the oil under that contract, subject to review, audit, and adjustment. Such allowances shall be subject to the provisions of § 206.105(e). The MMS's approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of the Form MMS–4110 the same month the transportation allowance first is reported on Form MMS–2014, Report of Sales and Royalty Remittance. This is a one-time filing effective for the entire reporting period. The allowance will be denied for any production month for which a Form MMS–4110 is not received prior to, or at the same time as, the Form MMS–2014 for that month.

(2) The transportation allowance determined pursuant to an arm's-length contract shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance pursuant to paragraph (a)(1) of this section and shall continue for 12 months, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier. At that time, the lessee must resubmit page one of Form MMS–4110 in accordance with § 206.105(c).

(3) If an arm's-length transportation contract includes more than one liquid product and the transportation costs attributable to each cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (including water) to the volume of all liquid products. The MMS will not give an allowance for transporting lease production which is not royalty bearing.

(4) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by [*insert date 60 days after effective date of final rule*] or within 60 days after the lessee begins the transportation, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(5) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(6) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(b) (1) Non-arm's-length or no contract. If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services itself, the transportion allowance will be based upon the lessee's reasonable, actual costs. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to future review and audit. For non-arm's-length or no contract situations, MMS approval of transportation allowances is not required. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. The MMS may direct a lessee to adjust its allowance when necessary or appropriate.

(2) An oil transportation allowance determined pursuant to a non-arm's-length contract or a no contract situation shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue for 12 months, or until the non-arm's-length contract terminates or the no contract transportation terminates, whichever is earlier. The lessee shall submit a

completed Form MMS–4110 the same month the transportation allowance first is reported on Form MMS–2014, Report of Sales and Royalty Remittance. This filing is applicable to all months in the reporting period. The allowance will be denied for any production month for which a Form MMS–4110 is not received prior to, or at the same time as, the Form MMS–2014 for that month. As provided in § 206.105(c), at the end of the 12-month period, or after the non-arm's-length contract or no contract transportation terminates, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next reporting period. The estimated oil transportation allowance shall not be greater than the reasonable, actual oil transportation costs in the previous reporting period, unless MMS approves a higher estimate upon written request from the lessee.

(3) For oil transportation allowances authorized by this paragraph, a lessee may deduct the transportation allowance that it has determined, subject to review and audit by MMS. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deductions.

(4) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data is not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(5) The transportation allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for transportation, including operating and maintenance expenses, overhead, [depreciation,] and a return on [undepreciated] capital investment. The transportation allowance shall be based upon actual costs incurred during the 12-month reporting period.

(i) Allowable operating expenses include: operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

**Alternative 1**

(iv) To compute depreciation, the lessee may elect to use either a straight-line depreciation method or a unit of production method based on the life of equipment or the life of the reserves which the transportation system services. After an election is made, the lessee may not althernate methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

**Alternative 2**

(iv) MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by a rate of return determined pursuant to paragraph (v). No allowance shall be provided for depreciation.

(v) The rate of return on [undepreciated] capital investment shall be the Moody Aaa corporate bond rate as published by Moody's Investors Service, Inc. in *Moody's Bond Record* on the first business day of the reporting period for which the allowance is applicable. This rate will be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent reporting period.

(6) The deduction for transportation costs shall be determined based on the lessee's cost of transporting each lease product through each individual transportation system. Where more than one liquid product is transported, allocation of costs to each of the liquid products transported shall be in the same proportion as the ratio of the volume of each liquid product (including water) to the volume of all liquid products and such allocation shall be made in a consistent and equitable manner. The MMS will not give an allowance for transporting lease production which is not royalty-bearing.

(7) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted within [*insert date 60 days after effective date of final rule*] or within 60 days after the lessee begins the transportation, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(8) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4110, including estimates and actuals. The data shall be provided within a reasonable period of time, as determined by MMS.

(c) (1) Reporting requirements. After the initial reporting period, for succeeding reporting periods, lessees shall submit Form MMS–4110 (or page one of Form MMS–4110 for arm's-length contracts) on an annual basis. Form MMS–4110 must be received by MMS within 90 days, after the end of the previous reporting period, unless MMS approves a longer period. If the Form MMS–4110 is not received timely, then the allowance requested will not be effective until the first day of the month in which the Form MMS–4110 is received, and will be applicable only to Form MMS–2014's, Report of Sales and Royalty Remittance, received after that date. The lessee will be required to refund, with interest, any unauthorized allowance which it has taken.

(2) The MMS may establish reporting dates for individual leases different than those specified in this subpart in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(3) Transportation allowances must be reported as a separate line on the Report of Sales and Royalty Remittance, Form MMS–2014.

(d) (1) Adjustments. If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken

during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected form MMS–2014, together with any payment, in accordance with instructions provided by MMS to reflect actual costs.

(3) For lessees transporting production from leases on the OCS, if the lessee's estimated costs were more than the actual costs, the lessee must submit a corrected Form MMS–2014, together with its payment, in accordance with instructions provided by MMS to reflect actual costs. If the lessee's estimated costs were less than its actual costs, the lessee must submit a written request for refund in accordance with section 10 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1339(a).

(e) Notwithstanding any other provisions of this subpart, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

(f) Other transportation cost determinations. The provisions of this section shall apply to determine transportation costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of transportation costs.

*30 CFR Part 207 is amended as follows:*

## PART 207—[AMENDED]

1. The authority citation for Part 207 is revised to read as follows:

**Authority:** 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; and 30 U.S.C. 1701 et seq.;

2. 30 CFR Part 207 is amended by revising the part title to read "SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS."

**§§ 207.1, 207.2, 207,5, 207.6, 207.7 [Removed]**

**§§ 207.3 and 207.4 [Redesignated as §§ 207.2 and 207.3 Respectively]**

3. Sections 207.1, 207.2, 207.5, 207.6, and 207.7 are removed. Sections 207.3 and 207.4 are redesignated as § 207.2 and 207.3, respectively.

4. The following subparts are added to Part 207.

**Subpart A—General Provisions**

**Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]**

**Subpart C—Federal and Indian Oil [Reserved]**

**Subpart D—Federal and Indian Gas [Reserved]**

**Subpart E—Solid Minerals, General [Reserved]**

**Subpart F—Coal [Reserved]**

**Subpart G—Other Solid Minerals [Reserved]**

**Subpart H—Geothermal Resources [Reserved]**

**Subpart I—OSC Sulfur [Reserved]**

5. 30 CFR Part 207 Subpart A, is amended by adding new §§ 207.1 and 207.4 and by revising newly redesignated §§ 207.2 and 207.3 (formerly §§ 207.3 and 207.4) to read as follows:

**Subpart A—General Provisions**

§ 207.1 Definitions.
§ 207.2 Contracts made pursuant to new form leases.
§ 207.3 Contracts made pursuant to old form leases.
§ 207.4 Contract and sales agreement retention.

## Subpart A—General Provisions

**§ 207.1 Definitions.**

The definitions in all subparts of Part 206 of this Title are applicable to this Part.

**§ 207.2 Contracts made pursuant to new form leases.**

On November 29, 1950, a new form of lease was adopted (Form 4–1158, 15 FR 8585), containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas valuation regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining approval of the United States as lessor, but must be retained as provided in § 207.4.

**§ 207.3 Contracts made pursuant to old form leases.**

(a) Old form leases are those containing provisions prohibiting sales or disposal of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement approved by the Secretary of the Interior, or by the Director of the Minerals Management Service or his representative. A contract or agreement made pursuant to an old form lease may be made without obtaining approval if the contracts or agreement either contains the substance of or is accompanied by the stipulation set forth in paragraph (b) of this section, signed by the seller (lessee or operator).

(b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows:

It is hereby understood and agreed that nothing in the written contract or in any approval thereof shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas regulations applicable to the lands covered by said contract.

**§ 207.4 Contract and sales agreement retention.**

Copies of all oil and gas sales contracts, posted price bulletins, etc., and copies of all agreements, contracts, or other documents which affect the gross proceeds, as well as any other information regarding any consideration for the sale or disposition of the product which is not included in such contracts, are to be maintained by the lessee, and made available upon request during normal working hours to authorized Department of the Interior audit teams, other MMS or BLM officials, or auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to MMS within a reasonable period of time, as determined by MMS. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR Part 212.

30 CFR Part 210 is amended as follows:

## PART 210—[AMENDED]

1. The Authority citation for Part 210 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 210 is amended by revising the titles of Subpart B., Subpart C, D, F, and G to read as follows:

**Subpart B—Oil, Gas, and OCS Sulfur—General**

**Subpart C—Federal and Indian Oil—[Reserved]**

**Subpart D—Federal and Indian Gas—[Reserved]**

**Subpart F—Coal [Reserved]**

**Subpart G—Other Solid Minerals [Reserved]**

3. The following Subparts are added to Part 210:

**Subpart H—Geothermal Resources [Reserved]**

**Subpart I—OCS Sulfur—[Reserved]**

**§§ 210.100, 210.101, 210.102, 210.103, 210.104, 210.105, 210.150 and 210.151 [Removed]**

**§§ 210.300 and 210.301 [Redesignated as §§ 210.350 and 210.351]**

4. Sections 210.100, 210.101, 210.102, 210.103, 210.104 and 210.105 under Subpart C and Sections 210.150 and 210.151 under Subpart D are removed, Sections 210.300 and 210.301 under Subpart F are redesignated as new Sections 210.350 and 210.351 under new redesignated Subpart H, respectively.

5. 30 CFR Part 210, Subpart B, is amended by the addition of § 210.55 to read as follows:

**§ 210.55 Special forms or reports.**

When special forms or reports other than those referred to in the regulations in this Part may be necessary, instructions for the filing of such forms or reports will be given by the MMS.

**PART 241—[AMENDED]**

30 CFR Part 241 is amended as follows:

The authority citation for Part 241 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 241 is amended by revising the titles of Subpart B.

Subpart C, and Subpart D to read as follows:

**Subpart B—Oil, Gas, and OCS Sulfur, General**

**Subpart C—Federal and Indian Oil—[Reserved]**

**Subpart D—Federal and Indian Gas—[Reserved]**

**Subpart H [Removed]**

3. "Subpart H—Indian Lands" is removed.

4. Subparts E, F, and G are redesignated as Subparts F, G, and H, respectively.

5. A new Subpart I is added to read:

**Subpart I—OCS Sulfur [Reserved]**

6. A new Subpart E is added to read:

**Subpart E—Solid Minerals, General [Reserved]**

**§ 241.10 [Removed and Reserved]**

7. Section 241.10 is removed and reserved.

**§ 241.50 [Amended]**

8. Section 241.50 is amended by removing the phrase "this subpart" and replacing it with the phrase "subparts B, C and D of this part."

**§ 241.100 [Redesignated]**

9. Section 241.100 under Subpart C is redesignated as a new § 241.60 under Subpart B and retitled "Assessments for Nonperformance".

**§ 241.60 [Amended]**

10. Paragraph (c) from newly redesignated § 241.60 is removed.

[FR Doc. 87-897 Filed 1-14-87; 8:45 am]

BILLING CODE 4310-MR-N

federal register

Thursday
January 15, 1987

Part VI

# Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 35, 200, 881, 882, and 886
Lead-Based Paint Hazard Elimination in Certain FHA Single Family and Multifamily Housing Programs; Section 8 Housing Assistance Payments Program for Substantial Rehabilitation; and Section 8 Existing Housing Certificate and Moderate Rehabilitation Programs; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Parts, 35, 200, 881, 882, and 886**

**[Docket No. R-87-1287; FR-2223]**

# Lead-Based Paint Hazard Elimination in Certain FHA Single Family and Multifamily Housing Programs; Section 8 Housing Assistance Payments Program for Substantial Rehabilitation; and Section 8 Existing Housing Certificate and Moderate Rehabilitation Programs

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule amends regulations regarding the elimination of hazards due to lead-based paint in certain FHA Single Family and Multifamily Housing Programs; Section 8 Housing Assistance Payments Program for Substantial Rehabilitation; and Section 8 Existing Housing Certificate and Section 8 Moderate Rehabilitation Programs. The main purpose of the rule is to update current regulations implementing section 302 of the Lead-Based Paint Poisoning Prevention Act in light of advances in knowledge regarding the causes of elevated blood lead levels in children as well as hazard detection and abatement techniques. HUD has also reexamined its regulations in light of the decision in *Ashton v. Pierce,* 716 F. 2d 56 (D.C. Cir. 1983), a case in which public housing tenants in the District of Columbia challenged the adequacy of HUD's lead-based paint regulations.

**EFFECTIVE DATE:** March 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** For FHA Single Family Insurance and Single Family Property Disposition programs contact Alan Kappeler, Director, Office of Insured Single Family Housing, (202) 755-3046, Room 9266; for FHA Multifamily Insurance and Multifamily Coinsurance programs contact Frank Brown, Deputy Director, Office of Insured Multifamily Housing Development, (202) 755-6500, Room 6134; for Multifamily Property Disposition programs and Section 8 Housing Assistance Payments for Substantial Rehabilitation contact James Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, (202) 426-3970, Room 6182; and for section 8 Existing Housing Certificate and section 8 Moderate Rehabilitation contact Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, (202) 755-5720, Room 6128; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

## I. Background

This rulemaking was initiated in response to the *Ashton* court order by publication of an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 19210, May 4, 1984), which solicited public comment on issues relating to implementation of lead-based paint detection and hazard abatement procedures in the many distinct HUD programs to which the statute applies. In accordance with a subsequent order of the United States District Court for the District of Columbia, a proposed lead-based paint rule for Public and Indian Housing was published on February 14, 1986 (51 FR 5666), and the final rule was published on August 1, 1986 (51 FR 27774). (In the most recent *Ashton* related activity, plaintiffs requested that HUD be held in contempt based on alleged noncompliance of the Public and Indian Housing Final Rule of August 1, 1986 with the Court's order. This motion was denied by the Court on October 17, 1986.)

On July 1, 1986, HUD published this rule in proposed form, involving both the insured mortgage and assisted housing programs. This rule, which addresses the hazards of lead-based paint in FHA Single Family and Multifamily Insurance and Coinsurance programs, HUD-owned Single Family and Multifamily Property Disposition programs, Section 8 Housing Assistance Payments program for Substantial Rehabilitation; and Section 8 Existing Housing Certificate and Section 8 Moderate Rehabilitation programs, was published pursuant to the order of the District Court. That order requires publication of this final rule not later than January 15, 1987.

This rule covers the Housing Voucher program because the Housing Quality Standards for the Section 8 Existing Housing Certificate program also apply to that program. The Department is adopting a policy that is identical for both the Section 8 Existing Housing Certificate and Housing Voucher programs. Although the Housing Voucher program is not currently covered in the Code of Federal Regulations, the provisions of this rulemaking incorporate the Housing Voucher program.

The issue of what procedures may be "practicable" differs within the various HUD programs. In the Public and Indian Housing programs, the cost of hazard abatement is a public, that is, Federal cost. In the FHA Single Family and Multifamily Insurance and Coinsurance programs, the cost of hazard abatement required to qualify an existing property for FHA mortgage insurance or coinsurance is a private cost to be borne by the seller. In the HUD-owned Multifamily Property Disposition program, the cost of hazard abatement, as with other required repairs, generally will be borne by the purchaser, although HUD may share in the cost by accepting a reduced sales price. In the Single Family Property Disposition program, abatement costs will be borne immediately by the FHA Fund and ultimately, in the case of most programs, by other homeowners with interests in the Mutual Mortgage Insurance Fund. In the Section 8 Existing Housing Certificate, Housing Voucher and Moderate Rehabilitation programs, the cost of hazard abatement required to qualify the rental unit as one in which a very low-income tenant's rental payment will be subsidized must be borne by the private landlord. The impact of these costs on the availability of the programs to their intended participants is a relevant consideration in determining whether the requirements are "practicable"; see discussion of *Ashton* decision below and the Program Requirements in section IV.

This preamble is divided into five sections: (I) Background (discussion of statutory and regulatory requirements and the *Ashton* decision); (II) Rulemaking Comments; (III) Recent Studies of the Lead-Based Paint Problem; (IV) Program Requirements; and (V) Section-by-Section Review of Regulations.

### *A. Statutory and Regulatory Requirements*

HUD's authority to issue this rule is based on the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846 ("LPPPA") originally enacted in 1970. Section 302 of LPPPA, which was added in 1973, requires the Secretary of HUD to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." Some of the HUD programs covered by this rule involve an application for mortgage insurance (*e.g.*, FHA Single Family and Multifamily Insurance and Coinsurance). Other programs covered by the rule involve an application for housing assistance payments (*e.g.*,

Section 8 Existing Housing). For these programs, section 302 of the LPPPA prescribes that the procedures shall "as a minimum provide for . . . appropriate measures to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed;" and further, that the procedures must apply to housing constructed prior to 1950 and "may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead-based paint."

Section 302 of LPPPA also requires the Secretary to "establish and implement procedures to eliminate the hazards of lead-based paint poisoning in all federally-owned properties prior to the sale of such properties when their use is intended for residential habitation." The Department concludes that the "as far as practicable" standard should apply to disposition of these federally-owned properties (see 41 FR 28876, 28877, July 13, 1976).

HUD implemented section 302 of LPPPA by promulgating regulations in 1976 which are found at 24 CFR Part 35 and by incorporating Part 35 in other program-specific regulations. Revision of Part 35 was recently implemented (51 FR 27788, August 1, 1986). This rule further amends Part 35 and supersedes Subpart C of Part 35's minimum requirements by establishing specific program requirements. Subpart E of Part 35 (Elimination of Lead-Based Paint Hazards in Federally-Owned Properties Prior to Sale for Residential Habitation) has also been revised (51 FR 27788, August 1, 1986). This subpart establishes minimum requirements for the sale of all Federally-owned (*e.g.*, HUD, Veterans Administration, Farmers Home Administration, General Services Administration, Department of Defense) residential housing. In this rulemaking a new Subpart G has been added which sets forth the Secretary's waiver authority.

*B. The Ashton Decision*

In *Ashton v. Pierce*, public housing tenants in the District of Columbia challenged the adequacy of the Department's lead-based paint regulations. The United States Court of Appeals for the District of Columbia held that the Department's Lead-Based Paint regulations (Part 35) were invalid because they were inconsistent with the LPPPA's mandate that the Secretary establish procedures for HUD-assisted housing "to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed . . ." 42 U.S.C. 4822.

Specifically, the Court held that the regulations are deficient in not treating intact lead-based paint surfaces accessible to children as an "immediate hazard" under the Act. Those regulations defined "immediate hazard" as "paint . . . which is cracking, scaling, chipping, peeling or loose." The definition did not require that the lead content in the paint be measured or identified, only that the condition of the paint be defective. The definition excluded intact or "tight" paint regardless of its lead content. The Court concluded that the Act's language and its legislative history demonstrate "that Congress intended the Department to eliminate at least lead-based paint that is accessible to, and chewable by, children." 716 F.2d 63.

The Court affirmed the district court's holding that the Department had failed to fulfill its statutory duty to establish procedures to eliminate the hazard of accessible intact paint "as far as practicable." The Court concluded that the administrative record of HUD's rulemaking showed that the Department erroneously placed too much emphasis on cost-effectiveness in determining the practicability of hazard elimination measures. The Court held that the "as far as practicable standard allows the Department to consider cost and technical considerations in developing its regulations and that the threshold of practicability is reached if there exists reasonably available techniques for eliminating the hazard." 716 F.2d 64. The Court, however, declined to affirm the district court's finding that the administrative record established that elimination of chewable intact paint is in fact practicable. The Court determined that in undertaking further rulemaking to bring the lead-based paint regulations into conformance with the Act's mandate regarding "immediate hazards," the Department should also consider the practicability issue. For a further discussion of the practicability standard see Section IV.C. below.

**II. Rulemaking Comments**

HUD commenced rulemaking by publishing an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 19210, May 4, 1984). The ANPR raised four major regulatory issues: (1) Hazard Determination; (2) Program Coverage; (3) Notification; and (4) Monitoring and Enforcement. Several questions were raised within each of the principal issues. Thirty-nine comments were received from commenters including public housing agencies, state, county and city health departments, cities, trade associations, public interest organizations, state housing authorities and individuals. Commenters submitted or referred to numerous articles and papers that addressed additional aspects of the problem. A proposed rule for Public and Indian Housing was published (51 FR 5666, February 14, 1986) discussing those public comments and requesting additional comments. After receipt of such comments, a final rule for Public and Indian Housing was published on August 1, 1986 (51 FR 27774) and became effective on September 23, 1986. Additionally, a proposed rule for the housing-related Community Planning and Development programs of the Department was published on August 1, 1986 (51 FR 27793).

Prior to publication of this rule, a proposed rule addressing the hazards of lead-based paint in FHA Single Family and Multifamily Insurance and Coinsurance programs, HUD-owned Single Family and Multifamily Property Disposition programs, Section 8 Housing Assistance Payments program for Substantial Rehabilitation, and Section 8 Existing Housing Certificate and Section 8 Moderate Rehabilitation programs was published on July 1, 1986 (51 FR 24112). As proposed, the rule would amend 24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures; propose a new Subpart O in 24 CFR Part 200, Introduction; and amend 24 CFR Part 881—Section 8 Housing Assistance Payments Program for Substantial Rehabilitation, Part 882—Section 8 Housing Assistance Program—Existing Housing and Moderate Rehabilitation, and Part 886—Section 8 Housing Assistance Payments Program—Special Allocations.

The proposed rule discussed three principal elements: (1) Construction Cut-Off Dates; (2) Testing and Abatement; and (3) Practicability Standard. The proposed rule also discussed each of the above-mentioned HUD programs. Specific questions regarding the three principal elements and the HUD programs were raised in the proposed rule. Public comments were received on most of the specific questions presented, as well as on a variety of other matters. Twenty-two comments were received from the following organizations and one individual: Princeton Gamma-Tech, Inc., a lead detection equipment manufacturer; a registered nurse at the University Hospital of Jacksonville, Florida; the American Academy of Pediatrics; the Mortgage Bankers Association; the California Association of Realtors; the Houston Board of

Realtors; the National Association of Realtors; Counsel for the *Ashton* Plaintiffs; South Shore Lead Paint Testing, Inc.; the State of Massachusetts Department of Public Health; and twelve Housing Authorities including Watervliet, New York Housing Authority, Phoenix Urban Development and Housing Department, Mobile Housing Board, Oklahoma City Housing Authority, Metropolitan Council of the Twin Cities Area in St. Paul, Minnesota, Boston Housing Authority, Belmont Shelter Corp. in Buffalo, New York, Los Angeles Housing Authority, Flagstaff, Arizona Housing Authority, Philadelphia Department of Housing, Greensboro Housing Authority and the New York City Housing Authority.

This section discusses the comments received on the three principal elements and the HUD programs.

*A. Construction Cut-Off Dates*

In the proposed rule, HUD set forth two alternative provisions regarding defective paint abatement in programs to which the Secretary's discretion is applicable. Under one proposal (Alternative A), HUD proposed to limit the defective paint inspection and abatement requirements to housing constructed prior to 1978 because of the ban on the commercial sale of paint having a lead content by weight of over .06% which became effective in 1977. In Alternative B, HUD proposed to limit all defective paint inspection and abatement requirements to pre-1950 housing.

Five commenters responded generally to these proposed alternative provisions regarding defective paint inspection and abatement. Three indicated that the matter of hazard determination in HUD-associated housing is favorably addressed by advancing the cut-off date from 1950 to 1978. One commenter questioned whether it is necessary at all to test paint in structures built before 1950; it was suggested that HUD could save substantial testing costs, presumably to be spent on testing more recent housing, if it simply assumed that potentially hazardous amounts of lead will be found in all residential structures built prior to 1950. The final commenter on this issue argued that the Secretary does not have the discretion to propose alternative cut-off dates for defective paint inspection and abatement only, and to set a 1950 cut-off date for the testing and abatement of intact chewable paint; distinguishing between defective and intact chewable paint in this way is an abuse of discretion, according to the commenter. This commenter stated that given a choice of cut-off dates for defective paint testing and abatement, 1978 is preferable, although HUD should not apply any cut-off date to the inspection and abatement procedure but should eliminate all immediate hazards.

For the reasons set forth in section IV.A. below, the Department has established (with certain exceptions) a 1973 cut-off date for the inspection and removal of defective paint. For chewable surfaces the Department concluded that under certain programs it would extend testing and abatement requirements to pre-1973 housing under prescribed circumstances and conditions. Section IV.A. sets forth the Department's rationale for its decisions which were based, *inter alia*, on studies available to the Department concerning the estimated incidence of use of lead-based paint after 1950. With respect to the comment that making a distinction between defective and intact chewable paint is an abuse of discretion, it was the view of the Department that defective paint because of its ease of ingestion by small children represents a more immediate danger than intact chewable paint, and therefore the priority of defective paint treatment was warranted. See pertinent discussions in: (1) Lin-Fu, Jane S., "Vulnerability of Children to Lead Exposure and Toxicity," New England Journal of Medicine, Dec. 6, 1973, 1229–1233; (2) Urban, Walter D., "Statistical Analysis of Blood Lead Levels of Children Surveyed in Pittsburgh, Pennsylvania," National Bureau of Standards, 1976; and (3) Clark, S., *et al.*, (1984) "Condition and Type of Housing As Indicator of Potential Environmental Lead Exposure and Pediatric Blood Lead Levels, Env. Res. 38: 46–53.

*B. Testing and Abatement*

HUD requested general comments on the availability and reliability of X-ray fluorescence analyzers (XRFs), other reasonably available techniques for testing lead content in paint, and the 1.0 $mg/cm^2$ standard for lead-based paint. Six commenters responded to these inquiries. One stated that XRFs are readily available, simple to operate, quickly repaired and completely safe. Another commenter, however, said that XRFs are unstable in nature (having large periods of down time), expensive to repair, subject to weather conditions, inconsistent in their readings and give off some radiation. According to this commenter and one other, paint testing using a 6–8% solution of sodium sulfide is a more consistent, accurate, inexpensive and easier method. Two commenters indicated that the permissible limit for lead should be .7 $mg/cm^2$ of exposed surface, and not 1.0 $mg/cm^2$. One commenter stated that the permissible limit should be .1 $mg/cm^2$. Another suggested that a standard of 1.2 $mg/cm^2$ should be adopted.

Given these comments regarding miscellaneous testing procedures, the testing and abatement standard will be 1.0 $mg/cm^2$ using an XRF. HUD has selected the 1.0 $mg/cm^2$ level for several reasons. The 1.0 $mg/cm^2$ level provides for an adequate margin of safety between abatement levels and levels that have been demonstrated to be dangerous because they are often associated with EBLs. Research by Gilbert, *et al.* (1979) found that median paint lead levels in the homes of children with EBLs were about 10 $mg/cm^2$ for interior surfaces and 16 to 20 $mg/cm^2$ for exterior surfaces. Control subjects, without EBLs, lived in houses in which paint lead was generally less than 1.0 2 $mg/cm^2$, except for some exterior surfaces. Research by Reece, *et al.* (1972) found that children with EBLs lived in housing with lead content averaging between 4 $mg/cm^2$ and 8 $mg/cm^2$ on interior surfaces and between 10 $mg/cm^2$ and 17 $mg/cm^2$ on exterior surfaces. The 1.0 $mg/cm^2$ level is within the range of 0.7 $mg/cm^2$ to 2 $mg/cm^2$ typically used as abatement standards by local CLPPPs. One of the two available XRFs, the XK–3, was designed to a contract specification of 1.0 $mg/cm^2$. Tests by the National Bureau of Standards (NBS) (1978) showed that the XK–3 was sensitive to lead at that level, although the accuracy was not as good as specified in the contract. The NBS did not thoroughly test the XK–3 for sensitivity or accuracy at lead concentrations of 0.7 $mg/cm^2$. The manufacturer of the other available XRF, the Microlead I, has stated that the machine more than meets these requirements. Thus, the testing and abatement standard can be met adequately using either of the available detection instruments. Laboratory chemical analysis may be used if approved by HUD in cases where it is not practical to obtain XRF readings. The Department's rationale regarding the use of XRFs is found in section IV.B. below.

HUD requested comments as to which localities use laboratory chemical analysis and the feasibility of relying on public and private concerns for the testing procedure. The public comments received by HUD did not address these issues.

HUD also asked for commenters to discuss various methods of lead-based paint treatment. Five commenters provided their views on abatement. Three stated generally that the

abatement methods set out in the proposed rule should be made more extensive, or should remove the immediate hazards of lead-based paint more thoroughly. One commenter indicated that the rule should state clearly that defective paint should be removed from all interior and exterior exposed surfaces including floors, walls, and ceilings, regardless of height. This commenter also indicated that abatement should include the sealing process, to prevent the escape of lead particulates into the living space. Another commenter stated that the proposed abatement methods are superficial. According to this commenter, lead-based paint should be completely removed, rather than simply covered up. One of these commenters said that paint scraping is not an acceptable procedure for removing lead-based paint. This commenter also mentioned that HUD should take all steps necessary to protect tenants during the abatement process, including relocating the individuals occupying the units. Another commenter stated that defective paint on all exterior surfaces should be abated, and also suggested that HUD should evaluate the safety of infra-red or coil type heat guns as a method of abatement. Finally, one commenter stated, to the contrary, that the proposed rule should have set out general safety standards to be achieved by whatever lead paint removal methods a locality chooses.

For abatement, the Department has established standards based on CDC's "Preventing Lead Poisoning in Children," Atlanta, Georgia, 1985, with modifications oriented towards HUD's housing programs. A description of these standards may be found in section IV.B. below.

*C. Practicability Standard*

HUD invited comments concerning whether the forms of inspection, testing and abatement required in the proposed rule are practicable in nature Five commenters responded. One of these commenters indicated that the proposal was not workable for a number of reasons, including the excessive cost of testing and abatement, the lack of Federal funding and the unreasonable time restrictions for compliance with the testing and abatement requirements. The commenter suggested that owner certification that testing has taken place is an alternative to the requirement that Public Housing Authorities engage in the testing process. Three commenters responded that the rule, although perhaps practicable, did not seek to accomplish enough. One commenter recommended a Federal and State funded mass screening of all children, and subsequent abatement of all intact chewable surfaces and repainting of peeling and loose surfaces in homes of children with an elevated blood lead level (EBL). Two commenters recommended instead a "housing approach" whereby all HUD-Associated housing would be tested, whether or not an EBL is present. According to these commenters, a "health approach" whereby lead-based paint testing is triggered by the presence of an EBL is not practicable because the presence of an EBL reflects prior exposure to lead and does not demonstrate the existence of lead in the HUD-Associated Housing to be occupied, and in effect "uses children as canaries or guinea pigs" to detect the presence of lead-based paint. One commenter added that HUD should assume greater responsibility for ensuring that State, local and nonprofit housing agencies that administer HUD programs comply with State or local lead paint standards that are more stringent than Federal standards. Another commenter also requested that HUD expand the protection of the rule to include handicapped persons of all ages. A final commenter found the proposed rule to be inadequate in a number of areas; the rule falls far short of the limits of practicability, according to this commenter. The commenter stated that the "as far as practicable" standard applies to the elimination of lead-based paint in HUD-Associated Housing—not to the detection of the lead-based paint. HUD can't wait until EBL's exist or test for lead-based paint randomly. HUD has the option of testing all HUD-Associated housing for immediate hazards and then abating as far as practicable or, removing all defective and intact chewable paint in HUD-Associated Housing. According to this commenter, HUD has placed too much emphasis on cost considerations in the practicability analysis for HUD-Associated Housing, and has misplaced the practicability analysis altogether in the area of HUD-Owned Housing.

Section IV.C. and subsequent portions of this Preamble dealing in the particular programs discuss extensively the practicability issues involved in inspection, testing and abatement for lead-based paint giving a rationale for the positions taken by the Department in this Rule. We believe these discussions are responsive to the various questions raised by the commenters.

*D. Single Family Insurance and Coinsurance*

HUD requested comments on several questions regarding the specific application of inspection, testing and abatement procedure to eliminate as far as practicable the immediate hazards of lead-based paint in the Single Family Insurance and Coinsurance programs.

HUD asked whether the program was practicable. Six commenters responded with various explanations of why the program was not practicable. Three asserted that it was not feasible to expect the seller to incur the additional cost of lead paint abatement; the consequence of this proposal would be that buyers who look to FHA as the only source of financing may be excluded from the purchase of homes because sellers will refuse to sell. These commenters suggested that buyers should have the opportunity to buy property although there is potentially lead-based paint or arrange for and pay for the lead-based paint treatment, perhaps after closing on the home. One commenter stated that the proposal would have been more practicable if before implementing it, HUD had made a determination as to which geographic areas have a lead-based paint poisoning problem and narrowed the focus of the rule to those areas. The commenter also suggested that homesellers should have the opportunity to treat all interior surfaces and all exterior chewable surfaces without engaging in the inspection and testing processes to save time and possibly money. One commenter suggested that the inspection for lead-based paint should not be triggered by the appraisal of HUD-Associated Housing, but rather by the actual transfer of the property, because on occasion, property is appraised, but not transferred. A final commenter indicated that HUD's proposal to eliminate lead-based paint in the Single Family Insurance and Coinsurance programs was not practicable enough. This commenter stated that HUD cannot inspect for defective paint only and ignore intact, chewable paint, nor can HUD simply abate all defective paint, ignoring lead content.

Section IV.D. 2 of this Preamble addresses the practicability issue with respect to the FHA Single Family Insurance and Coinsurance programs. For the reasons set forth, the Department determined that inspection and abatement of the immediate hazard of defective paint (using the appraisal process) was practicable but that the application of testing procedures for potential hazards in these programs would not be practicable. In making this determination and in devising the specific program, the views and reservations of the above commenters were carefully considered and taken into account.

HUD asked what State and local health, housing agency, CLPPP programs or private concerns would be able to assist if testing is required. Only two commenters responded to this question; both indicated that they are not aware of any such organizations who would be able to assist with testing. The rule, as drafted, does not rely upon the availability of such assistance to carry out its objectives.

HUD asked if this proposed program would cause burdensome paperwork. The two commenters that responded to this inquiry disagreed in their answer; one commenter said yes; one said no, that burdensome paperwork would not result. It is the view of the Department that burdensome paperwork will not result in the implementation of this rule.

HUD asked whether sellers would be willing to pay for the cost of testing and abatement. As stated previously, three commenters indicated that such an expectation would be unrealistic. As noted elsewhere in the Preamble, the Department gave careful consideration to the potential burden implementation of this rule might have both on sellers and on the general attractiveness of the FHA insurance programs. The rule attempts to strike a reasonable balance between achieving the objective of the LBPPA and the more comprehensive objectives of HUD's several housing programs.

HUD inquired as to the effect the proposed program would have on FHA homebuyers. As indicated above, the same three commenters stated that buyers who can only obtain FHA-insured financing might be excluded from homeownership. As noted in the previous comment, HUD does not believe the requirements of the rule will unduly inhibit the FHA insurance program.

HUD asked what impact the program would have on the FHA fund and previously insured mortgages. One commenter suggested that the program would have no impact at all. Another commenter stated, but did not explain, that the cost of testing and abatement could decrease the amount of funding available to insure home mortgages.

HUD finally asked whether the proposed program would have an adverse effect on certain neighborhoods. Two commenters agreed that the program would adversely affect or lead to relining of older neighborhoods. In designing the FHA singie family abatement program set forth in this Rule, the Department was quite conscious of this potential adverse impact, but the program decided upon, we believe, strikes the necessary balance between the goal of lead-based paint hazard abatement and the larger, overall goals of the FHA program.

Three commenters also provided their views concerning the Single Family Insurance and Coinsurance alternative cut-off dates for the inspection of dwellings for defective paint surfaces. All three comments preferred the pre-1950 housing cut-off date for Single Family Insured and Coinsured Housing. Notwithstanding, the Department has chosen the more expansive date of 1973 in order to better protect affected individuals.

Two commenters also provided feedback concerning the testing and abatement procedures applied in the specific context of the Single Family Insurance and Coinsurance programs. One of these commenters suggested that the individuals engaging in the appraisal of the property and the inspection of the dwelling for defective paint surfaces should be protected from liability. It was suggested that HUD make it clear in the rule that a finding of a defective paint surface is not evidence of lead-based paint, nor is the failure to find a defective paint surface the failure to find lead-based paint. It was determined that a limited protection for this potential liability was inappropriate and infeasible. This commenter also suggested that the definition for defective paint should not include chipped paint, as most houses have some chipped paint. The Department concluded that chipped paint was an appropriate aspect of the definition of defective paint. This commenter stated that the lead-based paint problem should be redefined as a general public health problem. Testing and abatement of lead-based paint, therefore, should take place in all FHA housing where the lead problem might exist, rather than adopting a transaction-based approach wherein HUD provides treatment only when a house changes hands. According to this commenter, such a transaction-based approach serves to inhibit the sale of property. A general public health approach, however, the commenter stated, would require public funding. Whatever the virtues of a more general public health approach, the Department is limited in this rule to carrying out its statutory mandate under section 302 of the LBPPPA.

*E. HUD-Owned Single Family Property Disposition*

HUD did not receive any specific comments on this program.

*F. Multifamily Insurance Coinsurance*

One commenter stated that it preferred the pre-1950 construction cut-off date for the inspection of property for defective paint surfaces in the multifamily insurance program. Another commenter mentioned briefly a concern about the availability of XRFs to test for intact chewable lead-based paint in a multifamily insurance context. A final commenter stated in the context of this program a concern that sellers who do not wish to pay for the testing and abatement of lead-based paint will stop selling to FHA buyers; it was stated that buyers, in fact, probably would prefer the option of paying for testing and abatement. The Department concluded that the method with the best prospect of success was to place the burden on the seller.

*G. HUD-Owned Multifamily Property Disposition*

HUD did not receive any specific comments on this program.

*H. Section 8 Existing Housing Certificate, Housing Voucher and Section 8 Moderate Rehabilitation*

Five commenters specifically addressed the alternative cut-off dates for defective paint surface inspection in the context of the Section 8 programs. Three of these commenters asserted that the pre-1950 cut-off dates are preferable. Two commenters indicated a preference for the pre-1978 cut-off dates for defective paint surface inspection. As discussed, 1973 is the chosen cut-off date in most circumstances.

Three commenters specifically addressed testing and abatement issues in the context of the Section 8 programs. One of these commenters stated that the unavailability of XRFs and the necessity of training individuals to operate the XRFs would severely impact on the availability of HUD funds and on the effectiveness of the programs. Two commenters stated that HUD is not at this point certain of the reliability and safety of the XRFs, and that further investigation should be performed before publishing a final rule. HUD has concluded that if available, XRFs are the most cost effective testing means, and that they are acceptably accurate for HUD's purposes.

Thirteen commenters responded with their views on the practicability of procedures concerning lead-based paint detection and elimination in the context of the Section 8 programs.

Three commenters stated that HUD should have thoroughly investigated the extent to which lead-based paint poisoning is a problem in various geographic areas around the country and, then, proposed testing and abatement only where it is needed, and where States and localities do not

already have lead-based paint laws and ordinances. Two commenters added that current State law and local inspection procedures are in place and the HUD proposed rule would only serve to confuse landlords, and would not eradicate lead-based paint poisoning effectively. The LBPPPA is quite clear in its finding that lead-based paint is a national problem, and the approach taken in this rule is correspondingly national in scope. The Rule does, however, allow for State or local laws that may apply higher standards.

Eleven commenters specifically commented, in the context of the Section 8 programs, that widespread demand for XRFs and a limited supply will inflate the cost of testing for lead-based paint on chewable surfaces. These commenters agreed that testing costs, as well as the cost of abatement, would discourage landlords from participating in these HUD programs. (One commenter projected a 30% decline in landlord participation.) Three commenters added that the lead-based paint testing proposal would have the effect of limiting the availability of housing for low income individuals. Five added that the lead-based paint testing proposal would create an enormous administrative burden for public housing agencies and, at the very least, would cause program delays. Six commenters suggested that HUD provide program funding to PHAs to assist with testing and abatement. One commenter suggested that local HUD offices should retain XRFs for PHA use. One commenter stated that all Section 8 units that have never been tested should be tested for lead-based paint prior to occupancy; according to this commenter, units already tested should be retested only if tenants paint a surface which is suspected of containing lead. The scope and practical limitations applicable to the Section 8 programs are discussed in detail in section IV.H. of this Preamble.

Two commenters expressed concern whether free elevated blood lead level screening would be available for families at local health facilities; if not, a commenter indicated that many families might not participate in an EBL screening program, and testing of units for lead-based paint on chewable surfaces would not be triggered. Another commenter indicated a concern that the results of blood analyses might not be made available to housing officials and property owners because of confidentiality laws in some States. HUD has concluded that even if a problem exists in some states, parental cooperation could surmount perceived confidentiality difficulties.

One commenter stated that the thirty-day timeframe for the correction of defective paint surfaces is too restrictive. HUD has concluded that expeditious processing is necessary in this context and that a 30-day period will not be unduly burdensome.

Another commenter suggested that HUD adopt a broad "health approach" whereby testing of Section 8 units for defective or chewable paint would only be necessary if there was an EBL child. HUD is adopting a standard which requires defective paint to be inspected regardless of whether an EBL child is present but generally adopts a health approach for chewable surfaces in most circumstance.

Four commenters provided a positive response to the HUD proposal for orienting Section 8 tenants to the hazards of lead-based paint poisoning, as well as to the need for lead screening for children under seven. One commenter, however, recommended that HUD update its literature in this area to better reflect current knowledge and research.

## III. Recent Studies of Lead Poisoning Problem

### *A. EPA Air Quality Criteria for Lead*

EPA's Air Quality Criteria for Lead evaluates and assesses scientific information on the health and welfare effects associated with exposure to various concentrations of lead in ambient air. The documentation considers all sources of lead, including lead-based paint. Because of recent papers and scientific literature concerning the relationship between blood lead levels and blood pressure, EPA made available for public comment a draft addendum to the draft revised criteria document (February 11, 1986, 51 FR 5100). At the time of publication of this final rule, the criteria document and addendum are still under review.

### *B. Housing Study*

HUD completed a research study with Abt Associates to provide an estimate of the incidence and condition of lead-based paint in pubic housing units and common areas and an estimate of the cost of abatement under different regulatory approaches. This research was part of a larger contract to determine modernization needs in public and Indian housing. A copy of the study is available by requesting the Regulatory Impact Analysis utilized for the Public and Indian Housing Rule and cited at 51 FR 27787 (August 1, 1986). It is available from the Rules Docket Clerk, Room 10276, HUD, 451 Seventh Street, SW., Washington, DC 20410. (A small service and reproduction fee may be required.)

## IV. Program Requirements

The Department altered the structure of its regulations implementing the LPPPA in its lead-based paint rule for Public and Indian Housing and provided minimum requirements for other HUD programs effective September 23, 1986 (see 51 FR 27787, August 1, 1986). 24 CFR Part 35 continues to state generally applicable minimum requirements but authorizes Assistant Secretaries to promulgate program-specific regulations which supersede the general inspection and hazard elimination requirements of Subpart C of 24 CFR Part 35. The rationale for this Subpart C is to integrate the lead-based paint requirements into the administrative and operational structure of different programs and allow for "practicability" determinations to be based on specific program circumstances.

Few substantive changes in Part 35 are made except that the notification requirements in Subpart A of Part 35 are extended to all HUD-associated housing constructed during the period 1950-1977, and the Secretary's waiver authority is set out.

The lead-based paint rule for Public and Indian Housing revised the definition of HUD-associated housing and residential structure in § 35.3 The definition of HUD-associated housing was revised to more clearly follow the intent of Section 302 of the LPPPA. The revised definition reflects the statute's emphasis on an "application for mortgage insurance or housing assistance payments." The previous regulatory definition of HUD-associated housing was promulgated before passage of Section 302 of the LPPPA and is broader than the statute. (See 37 FR 22732 (October 21, 1972); 49 FR 19212 (May 4, 1984).

Inspection and hazard abatement requirements of Subpart C (24 CFR 35.24) which were previously amended on August 1, 1986 are further amended in this rule. The hazard abatement requirements are being amended as discussed below and the inspection requirements now appear in the program regulations. A construction cut-off date of 1950, the statutory cut-off date set out in Section 302 of the LPPPA, is being codified as a baseline requirement, although it is anticipated that cut-off dates beyond 1950 will be established at the discretion of Program Assistant Secretaries within specific program requirements. This Rule establishes a number of such program-specific cut-off dates.

After a general discussion of the construction cut-off dates, testing and the practicability standards, lead-based paint housing program requirements will be discussed in the same order as the proposed rule and include: (1) Single Family Insurance and Coinsurance; (2) HUD-owed Single Family Property Disposition; (3) Multifamily Insurance and Coinsurance; (4) HUD-owned Multifamily Property Disposition; and (5) Section 8 Existing Housing Certificate and Section 8 Moderate Rehabilitation. For lead-based paint requirements in the first four housing programs, HUD establishes a new Subpart 0 to 24 CFR Part 200. Part 200 was chosen because it applies to all of these programs and eliminates the need for extensive incorporation by reference. Section 200.800 provides a general applicability and purpose statement, and definitions for Subpart 0 are included in § 200.805. Specific program amendments are set forth for the remaining programs.

*A. Construction Cut-Off Dates and Notice Requirements*

As discussed in section I.A. above, Section 302 of LPPPA provides (with the exception of the sale of federally-owned property for residential habitation) that its requirements must be applied to housing constructed prior to 1950 and that they may be applied to housing constructed during or after 1950 "if the Secretary determines, in his discretion, that such housing presents hazards of lead-based paint."

The Court of Appeals in the Ashton case concluded that the Secretary's decision regarding notice provisions was not reviewable. In the interest of expanded public disclosure of potential lead hazards, Part 35 has been amended to make clear that all HUD-associated housing constructed prior to 1978 is covered by the notice requirements. See Subpart A of Part 35.

Construction cut-off dates for hazard elimination requirements were posited in the proposed Housing rule in the alternative—Alternative A—all HUD-associated Housing constructed before 1950 and Alternative B—all HUD-associated Housing constructed before 1978. The former date was the statutory minimum imposed by Congress some twenty years after 1950; the latter date was the year after the Consumer Product Safety Commission banned the commercial sale of paint having a lead content by weight of over .06%. The comments received by HUD concerning construction cut-off dates are discussed in section II.A. above. Only five comments were received on these alternative cut-off dates and they were not uniform enough to represent a consistent view. However, extensive internal reviews of the question were held which concerned, among other matters, the issue of what was practicable for each individual program, as set forth in paragraph 4 under Background above. Following this extensive review and consultation a decision to select pre-1973 housing as the construction cut-off date (with variations more fully discussed below) was recommended to the Secretary and is adopted in this final rule. The 1973 date rests on two bases: Section 401 of LPPPA, as enacted in 1971 directed the Secretary of Health, Education, and Welfare to prohibit the use of lead-based paint in assisted construction or rehabilitation. The Secretary of HEW promulgated regulations in March of 1972 and in August of 1972 complementing regulations were adopted by the Secretary of HUD. Further, HUD's Minimum Property Standards for Single Family and Multifamily have also prohibited the use of lead-based paint (percentages of lead-based paint have decreased from 1% to .06%) since 1973.

For most of the ongoing HUD assistance programs, 1973 is the construction cut-off date for defective paint. For properties acquired by HUD because of default, the date of 1978 is used if the project was not originally assisted by HUD.

For chewable surfaces, (*i.e.*, all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, such as protruding corners, windowsills and frames, doors and frames, and other protruding woodwork), the Secretary, pursuant to statutory discretion conveyed in the Lead-Based Paint Poisoning Prevention Act, will extend testing and abatement requirements in certain programs to pre-1973 housing under prescribed circumstances and conditions. There is a higher incidence of lead-based paint found in housing built before 1950 than in more recently constructed housing. See discussion in (1) Abt Associates, Inc., "The Cost of Lead-Based Paint Abatement in Public Housing," HUD, PD&R, 1986, (2) Urban, Walter D., "Statistical Analysis of Blood Lead Levels of Children Surveyed in Pittsburgh, Pennsylvania," National Bureau of Standards, 1976, and (3) Shier, D.R. and Hall, W.G., "Analysis of Housing Data Collected in a Lead-Based Paint Survey in Pittsburgh, Pennsylvania," National Bureau of Standards, 1977. Practicability issues are discussed thoroughly in Section IV.C. below and in each specific program section. The relative unavailability of lead-content measuring equipment and experienced operators is discussed in Section IV.B. below. This condition, considered in the context of the Single Family Insurance and Coinsurance programs with their high volume of applications and, more pertinently, large number of appraisers (FHA fee appraisers and Direct Endorsement lender appraisers) on whom the task of inspection would fall, compels the Secretary to believe that a chewable lead-based paint removal requirement is of questionable practicality in this program, even for pre-1950 housing. However, the volume of insurance or coinsurance activity involving pre-1950 multifamily structures is sufficiently small to permit an attempt to impose chewable lead-based paint removal requirements for that program.

While the Secretary is similarly concerned about practicabilily, he has established a chewable paint inspection and abatement requirement for pre-1973 units for which assistance is sought under the Section 8 Existing Housing Certificate and Moderate Rehabilitation programs, limited to units to be occupied by families with children having an identified elevated blood lead level ("EBL"). This is based in significant part on an understanding that (1) blood lead level screening programs are available in most areas where the prevalence of EBL children is highest, and (2) lead-content measuring equipment is likely to be reasonably available in many areas where a blood lead level screening capacity is available, and (3) these units are routinely inspected before occupancy and at least annually thereafter. Multifamily Insurance and Coinsurance and Multifamily Property Disposition programs also have a similar arrangement where an EBL child is present.

This rulemaking recognizes that post-1950 paint used in residential structures constituted a potential hazard. The hazard was reduced, throughout the period 1950–1973, by voluntary industry measures aimed at reducing lead content in paint and by increased governmental involvement at the State and national levels. Nevertheless, this rule establishes procedures for regulating post-1950 housing—procedures intended to relate the responsibility for inspection, testing and abatement of lead-based paint hazards to the reduced, albeit measurably present, health hazards that continue to exist in such housing.

The rule's design differentiates between defective paint surfaces and

intact paint because of the much-increased risk represented by defective paint surfaces. Abatement of defective paint without testing allows the targeting of scarce testing equipment to intact chewable paint. As discussed elsewhere in this preamble, and in the proposed rule, the multiplicity of HUD-associated (and other) properties to which testing and abatement procedures are to be applied, coupled with the limited availability of testing equipment, presents a practicability issue quite apart from cost-related concerns.

The 1986 EPA Report, after discussing several limited local studies, summarized evidence cited in the literature as indicating that one source of exposure in clinical cases of childhood lead poisoning is "peeling lead paint and broken lead-impregnated plaster found in poorly maintained houses." U.S. Environmental Protection Agency, "Air Quality Criteria for Lead," vol. 3, p. 11–160 (Draft Final, report, 1986).

The report noted that the generally accepted premise is that the presence of lead in paint is a "necessary, *but not sufficient*, condition to constitute a hazard." (Emphasis added.) Accessibility to peeling, flaking or otherwise non-intact paint, the study stated, is also a necessary condition to consider a hazard to be present. Lin-Fu, J.S., (1973) "Vulnerability of Children to Lead Exposure and Toxicity", parts 1 and 2. New England Journal of Medicine, 289:1229–1233, 1289–1293. Results of a Pittsburgh survey cited by EPA show that there was only a low correlation between lead levels on the surface of intact paint and the blood lead levels of tested occupant children, but that there is a stronger correlation between blood lead levels and the presence of defective paint. Urban, W.D. (1976) "Statistical Analysis of Blood Lead Levels of Children in Pittsburgh, Pennsylvania," National Bureau of Standards, Washington, D.C. Report NBS (R–76–1024).

Similarly, CDC data cited by EPA in its report showed that a significant number of children with excessive lead absorption levels occupied dwelling units which had been inspected for lead-based paint hazards, but in which no hazard could be demonstrated. The CDC data indicated that in about 40 to 50 percent of confirmed cases of elevated blood lead levels, a home-based source of lead paint hazard could not be located. EPA 1986 *op. cit.*, p. 11–160–161. In the remaining cases, a dwelling paint hazard was identified which may represent a significant actual source of lead for the child.

The findings should not be taken as evidence that lead-based paint is not a major environmental source of lead. The EPA report instead suggests consideration of the concept of "total lead exposure"—lead-based paint being identified as one source of lead contributing to that total exposure.

This EPA-cited data is considered significant by HUD, in that it suggests the appropriateness of continuing to place priority on abatement efforts involving defective paint surfaces, recognizing that non-intact paint presents the far greater health risk, regardless of the lead content present in the paint.

*B. Testing and Abatement*

The legislative history of the 1973 Amendment to LPPPA (see, *inter alia* 118 Cong. Rec. 20853 (1972)) indicates a strong Congressional expectation and intention that the new lead-based paint requirements would fit easily, without program disruption or substantial cost increase, into standard program administrative procedures. No departure from this expection was indicated after the markup changes in 1973; in the brief floor discussion of the revised bill, it was described as "essentially the same measure unanimously approved by the Senate last June" (119 Cong. Rec. 1488, 91973) (Senator Kennedy)).

Inspection for defective paint conditions can be done easily by the appraiser or other customary inspector because no detection equipment beyond the naked eye is required. Inspection for intact paint having a measured lead content is another matter, requiring equipping the appraiser or inspector with special equipment. This requirement presented the most problematic consideration in determining the practicability of intact paint inspection and abatement requirements in program contexts. The comments received by HUD on testing and abatement procedures are discussed in section II.B. above.

The state of the art of testing for lead content in paint is currently limited to laboratory chemical analysis or portable XRFs. Portable XRFs are recommended by the Center for Disease Control (CDC), and are less costly than laboratory chemical analysis. Laboratory chemical analysis is discouraged because there is no direct equivalence between this type of analysis and the readings given by the XRFs. Lead paint analysis by laboratory chemical analysis also takes longer than by use of an XRF. The XRF provides immediate readings. In the laboratory chemical analysis approach, it is estimated that thirty to forty samples can be analyzed per day at a cost of $12 per sample in a public laboratory. Typically, six to eight samples are taken per room to test for lead paint using the laboratory chemical analysis method. The costs for this service at private laboratories is estimated at $25 per sample or $175 per room. The cost of using an XRF is estimated at $20 per room (taking twenty to twenty-five readings per room) and typically two three-bedroom units can be tested in one day. Two companies are currently manufacturing XRFs. The cost is approximately $8,000 per machine, and the yearly maintenance is approximately $2,500.

The number of chemical testing laboratories available throughout the country capable of handling HUD's testing, if required, is limited at best. To HUD's knowledge, there are approximately 400 XRFs in existence throughout the United States to test not only housing in HUD programs but all other private housing. Most of the XRFs, which may or may not be available on a routine basis to test properties participating in HUD programs, are owned by municipalities or organizations affiliated with state or local government. HUD is also aware that there is substantial downtime in repairing XRFs.

In addition to their limited availability, HUD has other concerns regarding the XRF. HUD received sixteen comments on the XRF in response to the proposed lead-based paint rule for Public and Indian Housing. Six comments were received on this rule, substantially duplicating those previously received. A majority of commenters suggested readings produced by XRFs are highly inaccurate (*e.g.*, XRFs are reported to read the opposite sides of walls, and to be influenced by lead pipes and other leaded building materials within the walls). Several commenters indicated that XRFs are not accurate at levels below 1.0 mg/cm$^2$. Other commenters suggested that XRF readings may be unreliable because of operational factors and suggested the need for a uniform training program, technical resource center and quality control guidelines. It was also suggested that an independent evaluation of the two currently available XRF instruments should be undertaken prior to initiation of a national program for intact paint hazard abatement dependent on the use of such detection equipment. Other commenters were concerned about the effects of cobalt radiation in using the XRF.

The Court of Appeals in *Ashton* agreed with the District Court, which stated that the "as far as practicable" standard allows the Department to "consider cost and technical considerations in developing its regulations" and that the threshold of practicability is reached if there exist "reasonably available techniques" for eliminating the hazard. 541 F. Supp. 641.

For purposes of this rule regarding testing for lead-based paint, HUD sets the standard for reliable detection of surface area to be XRF readings of greater than or equal to 1.0 mg/cm². Although a 0.7 mg/cm² standard is recommended in the Center for Disease Control's (CDC's) January 1985 statement, HUD establishes the 1.0 mg/cm² standard because of evaluations performed by the National Bureau of Standards (Evaluations of Lead Detectors, March 1977 and Evaluations of New Portable X-ray Fluorescent Lead Analyzers for Measuring Lead in Paint, May 1978) and because the vast majority of XRFs available today are designed to HUD's specifications (minimum precision of 1.0 ± 0.2 mg/cm²).

This regulation establishes testing in certain cases and relies on local or State public health, housing agencies or private concerns to test for lead-based paint. HUD is aware of approximately 50 active Childhood Lead Poisoning Prevention Programs (CLPPPs) capable of testing lead-based paint, which have provided services in the past at nominal or no cost. Certain CLPPPs may be using only laboratory chemical analysis.

For abatement, HUD is not prescribing a particular method but is requiring that the paint either be thoroughly removed or covered. HUD establishes minimum abatement standards and a revised 24 CFR 35.24(b)(2)(ii) sets forth a number of permissible treatment techniques. HUD uses the treatment described in proposed 35.24(b)(2)(ii) for the programs covered by this rule. Covering the hazard could include such methods as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Depending on the wall condition, wallpaper (which is permanently attached and not easily strippable) may be used. Covering or replacing trim surfaces is also permitted. Paint removal could include such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane torches are prohibited because of the additional hazards these methods create. Sanding produces the greatest deposits of lead in dust, with rates as high as 10 mg of lead/sq. ft./hour. Open-flame methods cause the lead to vaporize. Washing and repainting does not constitute hazard abatement.

*C. Practicability Standard*

The LPPPA requires HUD to establish procedures to eliminate "as far as practicable" the hazards of lead-based paint poisoning. The "practicability" standard applies to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments. The Department believes that the "practicability" standard applies also to HUD's property management and disposition programs.

In *Ashton*, the courts held that HUD had applied an erroneous standard in determining whether it was "practicable" to eliminate the immediate hazard of intact lead paint. In the Court of Appeals' view, HUD had construed "as far as practicable" to mean "most practicable." The Court expressly rejected what it considered to be a "cost-benefit analysis" approach employed by the Department.

> In plain language Congress commanded that if it is "practicable" to eliminate an immediate hazard, that hazard must be eliminated. The statute admits of no exceptions to the required elimination procedures on the basis of the degree of practicability. Neither Congress' concern about the cost of the elimination program nor congressional silence in the face of the Department's interpretation of the statute can overcome the clear statutory directive. *Id.*, at 64.

The Court of Appeals concluded, however, that the administrative record had not established that elimination of chewable intact paint is in fact practicable. *Id.* The Court of Appeals stated:

> It is peculiarly within the expertise of the Department to determine the practicability of a given elimination procedure. We agree with the district court that the "as far as practicable" standard allows the Department "to consider cost and technical considerations in developing its regulations" and that the threshold of practicability is reached if there exists "reasonably available techniques" for eliminating the hazard . . . *Id.*

A practicability analysis will be presented for each program below, but common issues affect each program. For example, the availability of testing resources is scarce given the magnitude of the possible demand. (See section IV.B. above.) There are only 400 XRFs presently available to perform testing. Notwithstanding any private demand for testing, if HUD imposed testing requirements on all of its housing insurance, coinsurance property disposition, Section 8 Existing Housing, Section 8 Moderate Rehabilitation, and Assisted Public and Indian Housing programs, in the first year alone there could be a demand for testing of over four million units. The unavailability of testing equipment and competent operators would severely impact the effectiveness and availability of HUD program activities and could lead to redlining of certain older neighborhoods. Testing requirements may have the effect of driving users away from HUD programs when substantially similar services are available privately without lead-based paint requirements. There is no guarantee that there will be a benefit to children. Without equipment, there will be severe program delays. For example, HUD currently processes approximately two million FHA Single Family Insurance applications per year. If all pre-1950 housing required testing (approximately 29% of applications), even assuming that appraisers could be equipped, there would be long delays in processing applications. If the cost of testing must be borne by the seller, many sellers may avoid sales to FHA buyers potentially denying homebuying opportunities to the lower income end of the purchasing market, FHA's primary clientele. Additional examples will be presented in each program discussion below. General comments received by HUD on practicability are discussed in Section II.C. above.

*D. Single Family Insurance and Coinsurance*

1. Scope. Section 200.810 of the rule establishes procedures to eliminate as far as practicable the immediate hazards of defective paint with respect to any one- to four-family dwelling constructed prior to 1973 which is the subject of an application for mortgage insurance under section 203(b) or other sections of the National Housing Act relating to the insurance or coinsurance of mortgages. Such other sections include sections 244 (coinsurance), 213 (cooperative housing insurance), 220 (rehabilitation and neighborhood conservation housing insurance), 221 (housing for moderate income and displaced families), 222 (mortgagor insurance for servicemen), 809 (armed services housing for civilian employees), 810 (armed services housing in impacted areas), 234 (mortgage insurance for condominiums), 235 (mortgage assistance payments for home ownership and project rehabilitation) 237 (special mortgage insurance for low and moderate income families) and 240 (mortgage insurance on loans for purchase). Applications for insurance in

connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by the FHA Commissioner are excluded from the coverage of this section. This section does not affect HUD-insured new construction or properties which are currently insured.

2. Practicability Analysis. The comments received by HUD on the Single Family Insurance and Coinsurance programs are discussed in section II.D. above. The availability of testing equipment is the greatest problem for the Single Family Insurance program. FHA is receiving single-family insurance applications at an annual rate of approximately 2,000,000; at that rate, a pre-1973 housing testing requirement would cover more than 1,000,000 units per year. There is little prospect of such an exponential increase in testing machines in the foreseeable future. Even if the problem of availability of testing equipment could be solved, use of testing equipment on the scale needed would involve a substantial new expenditure for fee appraisers (all the additional costs would fall on users of the programs) and creation of a new industry and training of hundreds of testing operators. Further, FHA applications come not only from urban centers, but from remote and distant dwelling places from every part of the fifty states and territories; in most of these areas a strict testing requirement would effectively preclude FHA assistance to the clientele the National Housing Act was designed to assist.

Under current procedures, HUD requires its fee appraisers to inspect dwellings before conditional commitment for defective paint. If the dwelling has defective paint, the commitment must contain a repair requirement. When such a hazard has been listed, the hazard is required to be corrected before the mortgage is endorsed for insurance. There are currently approximately 8,600 fee appraisers which appraise each property which HUD insures. Testing for lead-based paint could considerably burden the fee appraisers. Fee appraisers would need to: (1) Purchase or arrange for the use of testing equipment; (2) be trained in the proper use of testing equipment; and (3) expend considerably more time per dwelling.

Another practicability issue, which was addressed by commenters on this rule, is the expense of testing and abatement. The expense would fall to the seller. This may cause sellers not to sell to parties who require FHA mortgage insurance on their loans. The large numbers of families who cannot afford the downpayment required for conventional loans and those who cannot meet PMI underwriting requirements may be excluded from homeownership. The clear and preeminent purpose of FHA insurance—to help such potential homeowners—could be defeated, and testing requirements could effectively stop the program. Therefore, the Secretary has determined not to apply testing procedures to the Single Family Insurance and Coinsurance programs.

3. Program. This program focuses on an inspection by a fee panel or direct endorsement appraiser for defective paint surfaces in one- to four-family dwellings constructed prior to 1973. For each application for an FHA-insured mortgage which involves an appraisal of the dwelling, the commitment will indicate that the dwelling was inspected for defective paint surfaces and requires treatment of any defective paint surfaces. The appraiser inspects applicable surfaces (*i.e.*, any interior surface and any accessible exterior surface up to five feet from the floor or ground, which are readily accessible to children under seven years of age, such as a wall, stairs, deck, porch, railing, window, or doors) for defective paint (*i.e.*, any paint that is cracking, scaling, chipping, peeling or loose).

If defective paint surfaces are found, the seller of the home is required to abate such hazards as described in § 35.24(b)(2)(ii). Treatment is required for defective areas on interior and accessible exterior surfaces. Receipt and acknowledgement is also required in instances when a Veterans Administration Certificate of Reasonable Value is issued in lieu of an FHA conditional commitment. Appraisers currently follow the procedures in HUD's Valuation Analysis for Home Mortgage Insurance Handbook 4150.1 regarding lead-based paint surfaces. The Assistant Secretary for Housing—Federal Housing Commissioner plans to revise the treatment methods described in this handbook to reflect the requirements of this rule.

*E. HUD-owned Single Family Property Disposition*

1. Scope. Section 200.815 of the rule establishes procedures to eliminate as far as practicable the hazards of lead-based paint poisoning in HUD-owned one- to four-family dwellings, prior to the sale of such properties when their use is intended for residential habitation. It applies to defective paint surfaces in residential structures constructed prior to 1973, or between 1973 and 1978 if constructed without HUD insurance or assistance. For chewable surfaces, where a property constructed prior to 1950 is proposed to be sold to an owner-occupant family with one or more children younger than seven years, lead-based paint screening of such children and testing and abatement if required is mandated. HUD has a current inventory of approximately 45,500 one- to four-family dwellings. An additional 4,750 pre-1973 dwellings are added each month.

2. Practicability Analysis. The comments received on the HUD-owned Single Family Property Disposition program are discussed in section II.E. above. As discussed previously, if the requirements for HUD insurance are too onerous, sellers of residential structures will refuse to sell to purchasers who wish to use HUD insurance. When HUD has been forced to assume ownership of defaulted properties, it has better control and ability to implement abatement procedures. However, HUD is also concerned about the risk to the FHA fund and the potential risk to its purchasers. The use of lead-based paint in Federally-assisted construction and rehabilitation has been regulated since 1972. Therefore, HUD has established two standards—for residential structures constructed before 1973 (or before 1978 if not previously HUD insured or otherwise assisted) HUD will inspect and abate all defective paint prior to disposition (an exception for sale to non-owner occupants is created). For sales of pre-1973 residential structures to owner occupants with children under the age of seven, testing of the children and abatement of the paint if necessary is required, if reasonably available.

HUD has considered a number of testing requirements and the availability of testing equipment is a serious practical issue for this program. A shortage of testing equipment and competent operators could force HUD to proceed with abatement measures in many cases where there would be no hazard or force HUD to chip intact painted surfaces to collect samples for laboratory analysis. It is estimated that the HUD-owned Single Family Property Disposition program alone could need about 500 testing machines. The effective availability of the machines would be reduced by the fact that the machines often break down and need new radioactive sources every year. In addition, contractors and HUD staff would have to be trained in the safe operation of these machines.

Whether or not HUD purchases the testing equipment, the FHA Fund

ultimately will have to bear the cost. Based on current and anticipated sales of inventory from April 1, 1987 through September 30, 1988 (66,200 units), the cost of inspection, interest and other holding costs, and abatement for all pre-1973 housing would be approximately $132,484,000, using an estimate of $2,000 per residential structure. Those costs would reduce the benefits receivable after termination of insurance by participants in the Mutual Mortgage Insurance Fund and could require increases in mortgage insurance premiums or special appropriations for the Fund.

If HUD or its designees could not promptly test all of these dwellings, HUD would have to hold on to properties until it could do so. This may have the effect of denying many individuals the opportunity to purchase affordable housing. Even a modest disruption to the orderly disposition of the current inventory could result in a 35 to 50 percent increase in that inventory. In the first year, costs due to additional holding time and interest would amount to $35,000,000 or more. This does not include the cost of testing, abatement, deterioration, vandalism or additional staffing.

The growing inventory of HUD dwellings could have a negative impact on the nation's neighborhoods. Especially in borderline or declining neighborhoods, the presence of such dwellings could precipitate a decline in real estate values and an increase in defaults and foreclosures. Such a chain of events could have an adverse impact on HUD's mortgage insurance portfolio.

Notwithstanding costs, the same problems associated with the origination of mortgages hold true for property disposition. The HUD-owned Single Family Property Disposition program relies heavily on private companies (Area Management Brokers) ("AMBs") to appraise dwellings and to provide management support in its efforts to quickly dispose of inventory. There are approximately 400 AMBs. (Most HUD field offices have AMBs except for offices in remote areas or offices which have small property disposition inventories. HUD staff fulfills these functions where AMBs are not used.) Without AMBs, the program cannot function. If AMBs were required to purchase and learn how to use the testing equipment, the current staff of AMBs could seriously diminish, the need for AMBs would increase and the number of dwellings they appraise and manage would be reduced. If AMBs were required to test dwellings, they might need to be licensed by the state or local government. AMBs might be exposed to additional liability and in turn charge HUD higher costs. Even if AMBs were willing to procure the required equipment and train operators, a requisite staff would be needed in the HUD field offices for the purpose of monitoring the contractor to ensure satisfactory performance. Current staffing limitations preclude HUD field offices from doing such monitoring. If the HUD-owned Single Family Property Disposition function is contracted out to the private sector (as has been proposed), the resulting reduction in staff will make the testing, treating and monitoring of lead-based paint hazards virtually impossible for a majority of those dwellings. Because of the numerous practical problems associated with testing in this program, HUD is requiring testing only where blood lead level screening has indicated that a potential resident is a child with an EBL.

3. Program. The major elements of this program are inspection, testing, abatement and HUD funding. The program describes the hazards of lead-based paint as including any defective paint surfaces and lead-based paint on chewable surfaces where an EBL child is present.

Prior to the sale of one to four family housing constructed prior to 1973 (or 1978 if HUD had not insured or otherwise assisted the structure), the Department (or its designee) shall inspect such housing for defective paint surfaces. For residential structures constructed before 1950, after sale offering, but before closing, and where the sale is to an owner occupant with a child under seven years of age, and where a blood lead level screening program is reasonably available, screening of the child is required. The cost of screening, if any, will be the responsibility of the purchaser. If an EBL is detected, HUD requires testing of the dwelling and abatement of chewable surfaces containing lead-based paint prior to delivery of the deed. Testing for lead content will be performed by a state or local agency or a qualified HUD official. Lead content will be tested using an XRF or another method approved by the Commissioner. Test readings of 1 mg/cm$^2$ or higher using an XRF are considered positive for presence of lead-based paint.

Abatement actions are identical to the Single Family Insurance program. See section IV.D.3. For abatement methods, HUD allows the selection of the most cost-effective and adequate treatment.

*F. Multifamily Insurance and Coinsurance*

1. Scope. Section 200.820 of the rule establishes procedures to eliminate as far as practicable the immediate hazards of lead-based paint poisoning at the time of insurance commitment. Immediate hazards include defective paint surfaces in projects constructed prior to 1973 and chewable surfaces which contain lead-based paint constructed prior to 1950 (1973, if an EBL child is present). Applications for mortgage insurance under sections 207 (including applications under section 207 pursuant to section 223(f)) 213, 220, 221(d) and 234 of the National Housing Act, including applications for mortgage insurance under any of these sections pursuant to section 223(a)(7) of the National Housing Act are covered by this section. This section also applies to the application of coinsurance under section 207 pursuant to sections 223(f) and 244 as well as under section 221(d) pursuant to section 244 of the National Housing Act in connection with substantial rehabilitation of an existing project. This section does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age) or projects subject to an application for mortgage insurance under sections 231, 232, 241 and 242 of the National Housing Act. This section would not apply to 0-bedroom units. This section does not affect HUD-insured new construction or properties which are currently insured. This section will affect approximately 25,000 multifamily insurance and 50,000 multifamily coinsurance living units each year.

2. Practicability Anaylsis. The comments received by HUD on the Multifamily Insurance and Coinsurance programs are discussed in section II.F. above. The amount and cost of abatement will have the greatest effect on the availability of mortgage insurance in the moderate rehabilitation program because of the effect that increased repair cost has upon the "as-is" value of existing properties. Commenters on this rule expressed concern in this area. As in the case of testing, increasing costs would, in all likelihood, minimize moderate rehabilitation under an insurance program in any case where lead-based paint is detected. Upon a finding that such increased cost will be required, and the value of the property correspondingly reduced, the offending property would probably be withdrawn from the insurance pipeline and financed conventionally. The

availability of testing equipment is also a serious practical issue for these programs although there is a lower volume of activity in these programs than in single family programs. Partially due to this lack of availability, HUD requires testing on a random sample approach as required in the Public and Indian Housing rule.

Abatement measures as described in § 35.24(b)(2) will be taken in the full insurance program. The cost of the testing and any abatement necessary is includable in the HUD insured mortgage. However, the effect of such inclusions may be to reduce the "as is" value of the property and decrease the serviceability of the Multifamily Insurance program to those properties in need of full insurance.

3. Program. This program focuses on inspection for defective paint in residential properties constructed prior to 1973 and on inspection and random testing of properties constructed prior to 1950. At the time of joint inspection for pre-1973 residential structures, which will be prior to the issuance of a commitment, the HUD or coinsurer's architect and the sponsor's architect will inspect the project for defective paint surfaces and defective paint surfaces found will be treated as a condition of final endorsement.

In the case of residential structures constructed prior to 1950, a random sample of dwelling units shall be tested for lead-based paint on chewable surface. Chewable surfaces will be tested for lead content using an XRF or a method approved by the Commissioner. Test readings of 1 mg/$cm^2$ or higher using an XRF are considered positive for presence of lead-based paint. Testing of chewable paint shall be performed by a state or local health or housing agency or by an inspector certified or regulated by the state or local health or housing agency. The testing entity will certify to the results of the test. The mortgagor will be responsible for obtaining these testing services. A random sample method shall be used. Ten units shall be tested in projects with 20 or more units, and six units shall be tested in projects with fewer than 20 units, together with a sample of common areas and exterior applicable surfaces. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint and no further testing of such services is required. However, if lead is found in any unit, common area or exterior applicable surface further testing of such surfaces is required. After joint inspection and during the write-up stage, completion of abatement of defective paint surfaces and lead-based paint on chewable surfaces will be a special condition requirement in the commitment. HUD or the coinsuring lender will reinspect all units after repair and prior to final endorsements.

In the case of residential structures constructed prior to 1973 where test results have indicated that a child under seven living in a unit has an EBL, the developer must abate the unit or test this unit, and, if the test is positive, abate the unit in accordance with § 35.24(b)(2)(ii) requirements.

Where defective paint surfaces are found, treatment shall be provided to defective areas. The entire interior or exterior chewable surface containing lead-based paint will be treated. Treatment will follow the proposed requirements in § 35.24(b)(2)(ii). Any testing and abatement requirements will automatically be treated by HUD as basic architectural requirements for each project. Therefore, compliance with those requirements would be reviewed at the earlier of application for conditional or firm commitment stages of mortgage insurance processing to assure that the tests have been done, where applicable, and that appropriate abatement procedures are included in the construction drawings and specifications. During rehabilitation construction, the sponsor's architect and the HUD or coinsurer's architect will complete the normal inspections to assure compliance with the drawings, including the required abatement procedures.

No alteration in basic procedures is required in order to assure adequate enforcement of lead-based paint requirements. As indicated above, the abatement requirements will, of necessity, be included in the project plans and specifications. These plans and specifications are made a part of the construction contract.

In the case of substantial rehabilitation, an assurance of completion is required in accordance with § 221.542 for the National Housing Act's section 221(d) program and in similar regulations for all other applicable programs. These regulations involve a corporate surety bond in the amount of 100% of the amount of the HUD estimate of construction or rehabilitation cost or a completion assurance agreement secured by cash in the amount of 15 to 25% of the HUD estimate of construction or rehabilitation cost depending upon the type of structure. In addition, a 10% holdback from each draw is required which generally obviates the need to call on the assurance of completion bond. These assurances provide adequate security that the work specified in the drawings is completed in the normal course of events and provide adequate recourse to enforce the requirements should some difficulty arise during construction.

In the case of the National Housing Act's section 223(f) moderate rehabilitation program, repairs may be completed both before and after final endorsement. If repairs are to be completed before endorsement, HUD inspects to assure the adequacy of the repairs before the endorsement can occur. If repairs are to be completed after endorsement, HUD will require that mortgage proceeds in the full amount of the repairs be escrowed and, to assure completion in a timely manner, HUD will further require that a letter of credit be established for an additional 50% of the repair amount. This procedure provides adequate security to assure that all repairs are completed, including any required in connection with lead-based paint abatement.

*G. HUD-Owned Multifamily Property Disposition*

1. Scope. Section 200.825 of the rule establishes procedures to eliminate as far as practicable the hazards of lead-based paint poisoning in HUD-owned multifamily properties prior to the sale of such properties when their use is intended for residential habitation. The requirements of this section will apply to defective paint surfaces in HUD-owned multifamily properties construced prior to 1973, or prior to 1978, if not insured or otherwise HUD assisted. For projects assisted under section 223(f) of the National Housing Act, the 1978 date applies because projects assisted under this section were not originally covered under Part 35. For chewable surfaces which contain lead-based paint, the requirements will apply to properties constructed or substantially rehabilitated prior to 1950 (and not substantially rehabilitated under HUD supervision after 1973). If HUD is presented with test results that indicate a child seven years of age or younger living in a unit constructed prior to 1978 has an EBL, HUD must test the unit or cause the unit to be tested for lead-based paint. HUD may decide that the Department or the purchaser may forego testing and abate all interior and exterior surfaces. This section would not apply to O-bedroom units or projects for the elderly or handicapped (except for units housing children under seven years of age). HUD acquires

approximately 70 projects comprising 9,000 multifamily units each year.

2. Practicability Analysis. The comments received by HUD on the HUD-owned Multifamily Property Disposition program are discussed in section II.G. above. The availability of testing equipment is also a serious practicability issue for this program. This practicability issue has been thoroughly discussed above in other program practicability analyses. In this program, HUD will provide for treatment of all defective paint surfaces either by HUD while it owns the property or as a condition of disposition to a new purchaser. This applies to all defective surfaces in residential structures completed before 1973, or 1978 if not HUD insured or assisted. Testing for lead content in chewable surfaces presents other practicability problems such as holding costs of property in inventory, the availability of testing equipment, costs of purchasing testing equipment and training time, adverse effects on neighborhoods and ultimately availability of the program itself. Therefore, HUD has determined that it will apply random testing of chewable surfaces to all pre-1950 housing only and will abate or provide for abatement accordingly. Alternatively, HUD, at its option, or the purchaser may abate without testing. Further, if HUD is made aware of an EBL child in a pre-1978 residential unit it will require testing or abatement of unit surfaces.

The HUD-owned Multifamily Property Disposition program has several distinct features which separate it from the HUD-owned Single Family Property Disposition program. In the HUD-owned Multifamily Property Management and Disposition program, HUD generally shifts the responsibility of repairs to the purchaser. Lead-based paint repairs and all other required repairs would be completed after the sale. HUD will employ deed restrictions or other escrow measures to assure that the repairs, including lead-based paint abatement, are completed.

3. Program. The major elements of this program are inspection, testing, abatement, and purchaser requirements. This program describes the hazards of lead-based paint to include defective paint surfaces and lead-based paint on chewable surfaces. This program does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age). For defective paint surfaces, HUD will cause the property to be inspected for such surfaces prior to the offering of the property for sale. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2) will be completed prior to delivery of the property to the purchaser, or if the disposition program pursuant to 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in such required repairs.

HUD will also cause a random sample of dwelling units constructed before 1950 to be tested for lead-based paint on chewable surfaces as part of the sale process. Random sample testing as described in § 200.820(c)(1) shall be used for the testing of chewable surfaces. Testing shall be performed using an XRF or other method approved by the Commissioner. Test readings of 1 mg/cm² of higher using an XRF are considered positive for presence of lead-based paint. Testing of chewable surfaces shall be performed by a state or local health or housing agency or from an inspector certified or regulated by the state or local health or housing agency. The testing entity shall certify to the results of the test. Abatement actions are similar to abatement actions prescribed in the Multifamily Insurance program. See section IV.F.3. The purchaser's lead-based paint requirements will be provided in sales documents.

*H. Section 8 Existing Housing Certificate, Housing Voucher and Section 8 Moderate Rehabilitation*

1. Scope. Sections 882.109(i) and 882.404(d) of the proposed rule establish procedures to eliminate as far as practicable the immediate hazards of lead-based paint poisoning. These procedures provide for inspection for and abatement of defective paint surfaces in units constructed prior to 1973, at the time of the initial, annual or special inspection. The procedures also state that chewable surfaces in units constructed prior to 1973 with children under seven years of age with an EBL and which is covered by a housing assistance payment under the Section 8 Existing Housing Certificate, Housing Voucher and Moderate Rehabilitation programs must be tested and lead-based paint abatement at the time of initial, annual or special inspection. In addition, projects developed under the Section 8 Moderate Rehabilitation program that are also covered by HUD mortgage insurance or coinsurance shall comply with the more stringent requirements of either (1) 24 CFR Part 200, Subpart O or (2) the provisions of this section. Section 8 Moderate Rehabilitation units designated for the elderly are not subject to the testing requirements of this section. Section 8 New Construction is not covered by this rule because this program began after the prohibitions against the use of lead-based paint in federally-assisted construction.

2. Practicability Analysis. The comments received by HUD on the Section 8 programs are discussed in section II.H. above. The Section 8 Existing Housing Certificate and Section 8 Moderate Rehabilitation programs are unique in terms of how they are affected by the current regulatory requirement for the elimination of lead-based paint hazards. Under the current regulations, private owners of units leased under these Section 8 programs must generally bear the full costs of correcting all defective paint surfaces without regard to the existence of lead-based paint or children at risk. There is no Federal funding source for regulatory compliance, which places a severe burden on private owners, PHAs responsible for ensuring compliance, and Section 8 families. If an owner decides not to comply and, thus, not to participate in the program, the rental stock available to the Section 8 family is consequently reduced. This cycle adversely affects the Department's primary housing assistance programs for very low income families. Commenters on this rule expressed this view.

HUD believes it is not practicable to test intact paint on all chewable surfaces up to a height of 5 feet in units leased or to be leased under the Section 8 Existing Housing, Housing Voucher Program, or Section 8 Moderate Rehabilitation program for several reasons.

There are almost one million units currently under lease in the Section 8 Existing Housing and Housing Voucher programs, including 75,000 units under HAP Agreement in the Section 8 Moderate Rehabilitation program. Furthermore, based on current funding levels for the Section 8 Existing Housing and Housing Voucher programs, more than 250,000 new units enter the programs each year (*i.e.*, approximately 20 percent turnover and 50,000 additional incremental units). Experience with the Section 8 Existing Housing program indicates that a PHA must inspect between 3 and 5 units for compliance with Housing Quality Standards (HQS) for each new unit placed under Contract.

The cost to purchase an XFR is approximately $8,000 and the annual maintenance contract is approximately $2,500. Assuming that one machine is used 8 hours per day for 250 days, 2,000 units could be inspected annually with each machine. Some PHAs would need several analyzers because of the number

of units in their program. For example, the New York City Housing Authority would need 20 machines at a cost of approximately $160,000 in order to inspect all units in its inventory of 40,000 units on an annual basis. Machine maintenance could add an additional $50,000 of annual expense.

The current PHA administrative fee estimates a $50 inspection allowance per unit. The cost of using an XRF is estimated at $20 per room, or $120 for a typical two-bedroom unit. Testing for lead content in intact paint would impact significantly on the administrative costs of a PHA, especially in the first year. For example, a small PHA with 100 units in its program would earn approximately $26,000 in administrative fees per year, given a two bedroom Fair Market Rent (FMR) of $300. If the PHA was required to test the lead content of paint for all units when it does an HQS inspection, it would cost the PHA an average of $120 additional per two bedroom unit. Assuming the PHA may have to inspect as many as 180 units (100 units currently in the program and units resulting from turnover certificates) annually, it would cost this PHA approximately $21,600 in addition to the $10,800 initial cost of purchasing an XRF and maintaining it for one year. Thus, this PHA might have to spend as much as $32,000 (which exceeds its total administrative fee in the first year) just on analyzing the lead content of paint which is only a small segment of its total administrative responsibilities. Commenters on the rule indicated that the process of testing for lead-based paint using an XRF would be prohibitively expensive.

3. Program. The requirements of § 882.109(i) will apply to the Section 8 Existing Housing Certificate and Housing Voucher and the requirements of § 882.404(d) will apply to Section 8 Moderate Rehabilitation programs. These programs focus primarily on inspection, testing in the case of children with EBLs, abatement, certification, and monitoring and enforcement.

The program requires the PHA to inspect all units prior to occupancy by Section 8 assisted families and at least annually thereafter to ensure compliance with the HQS. As part of the HQS inspection, the PHA shall inspect for defective paint surfaces in units constructed prior to 1973 if they are or will be occupied by children under seven. Under § 882.109(i)(4), if a request for lease approval is submitted for a unit constructed prior to 1973 by a family which includes a child under the age of seven years with an EBL, the PHA shall have the unit tested for lead-based paint on chewable surfaces. Under § 882.404(c)(4), the PHA is also required to have a unit tested for lead-based paint on chewable surfaces if a proposal is submitted with respect to a unit constructed prior to 1973 occupied by a family which includes a child under the age of seven years with an EBL. Under both §§ 882.109(i)(5) and 882.404(c)(5), the PHA may at its option, forego testing and require the owner to treat all chewable surfaces. HUD is encouraging blood lead level screening of children under seven years of age and is amending §§ 882.209(c) and 882.514(d) to require the discussion of the need for and availability of screening at briefings with Certificate holders and families determined to be eligible for housing assistance payments before they seek a unit. HUD believes this is also a practicable approach for the Section 8 Moderate Rehabilitation program because tenants usually remain in the units after rehabilitation and HUD prohibits the tenants from being displaced after rehabilitation. Any new tenants in Section 8 Moderate Rehabilitation units would have been on the Section 8 waiting list and notified of the need for blood lead level screening. Testing for chewable surfaces shall be performed using an XRF or a method approved by the Assistant Secretary for Housing.

Where inspections find defective paint surfaces, treatment shall be provided to defective areas. Where testing finds lead-based paint on chewable surfaces, the entire interior and exterior chewable surfaces will be treated. For both defective paint surfaces and lead-based paint on chewable surfaces, abatement shall be performed before the HAP Contract is executed or, in the case of discovery at annual or special inspection, within 30 days of PHA notification to the owner. When weather prohibits repainting exterior surfaces before the deadline, the HAP Contract may be executed or the lease renewed provided the owner removes the defective paint or chewable lead-based paint and agrees to repaint by a specified date. Abatement methods including various removal or covering techniques are acceptable. If the owner of the unit is required to treat any defective paint surfaces or chewable lead-based paint surfaces, the PHA must obtain a written certification from the owner that necessary abatement has been done. The owner shall also take appropriate action to protect tenants from hazards associated with abatement procedures.

The PHA is required to keep a copy of each inspection report for at least three years. For units which are tested and/or abated of the hazards of chewable lead-based paint, the PHA shall keep the test results and owner certification of abatement indefinitely. If these records establish that chewable surfaces were tested or tested and abated in accordance with these proposed standards, these chewable surfaces do not have to be tested or abated at any subsequent time.

Annual inspections of all units by the PHA serve as the primary means of monitoring these requirements. The PHA is to notify the owner in writing of any HQS violations. If an owner does not take corrective action by the specified deadline, the unit does not meet the HQS and the PHA is authorized by the HAP Contract to stop housing assistance payments to the owner or to terminate the HAP Contract and provide the family a Certificate to search for another unit.

For Section 8 Moderate Rehabilitation units not under Agreement, abatement action will be done in conjunction with the rehabilitation. If the Moderate Rehabilitation units have progressed beyond this preconstruction stage, any required abatement must be done at the owner's expense unless the rehabilitation work is in progress and the unit is not under HAP Contract. In such cases, the additional costs to correct lead-based paint hazards can be covered within the Fair Market Rent limitations.

**V. Section by Section Review of Regulations**

The regulations amend Parts 35, 200, 881, 882, and 886. Each of these amendments is described below.

*Part 35*

The inspection and hazard abatement requirements in § 35.24 are amended and a waiver provision added as discussed above in section IV.

*Part 200*

These rules add a new Subpart O to Part 200 for lead-based paint poisoning prevention. The subject matter of this new subpart is discussed extensively above in section IV.D–G.

*Parts 881 and 886*

Sections 881.207(e), 886.307(i) and 886.333(b)(2)(iv) incorporate by reference the lead-based paint regulations in 24 CFR 200. Section 886.113 parallels § 882.109(i).

*Part 882*

Sections 882.109(i), 882.209 (b) and (c), 882.404(d), 882.507(b)(2)(iv) and 882.514(d) are amended. These sections are discussed above in detail in section IV.H.

**Other Matters**

*Regulatory Flexibility Act*

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. HUD finds that there are not anticompetitive discriminatory aspects of the rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 10410.

*OMB Control Number*

The information collection requirements contained in §§ 200.810(b), 200.815(c), 200.820(c)(2), 200.825(c), 200.830(a), 882.109(i)(6) and 882.404(d)(6) of this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502) and assigned approval number 2502–0185.

*Regulatory Impact Analysis*

This rule qualifies as a major rule as defined in Executive Order 12291. The Urban Institute under contract with HUD has reviewed the costs of various treatments necessary as set forth under this rule and has made tentative conclusions regarding costs per unit and aggregate costs per affected program. This cost analysis serves as the Regulatory Impact Analysis.

The cost study is available from the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The procedures otherwise required under Executive Order 12291 were initiated by forwarding draft documents to OMB but were not completed as to this rule because of a deadline imposed by judicial order, as described above.

*Semiannual Agenda of Regulations*

This rule was listed as sequence number 769 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424, 38433) under Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 35*

Lead poisoning, Reporting and recordkeeping requirements.

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

*24 CFR Part 881*

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

*24 CFR Part 882*

Grant programs: Housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

*24 CFR Part 886*

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

Accordingly, 24 CFR Parts 35, 200, 881, 882 and 886 are amended as follows:

## PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation of Part 35 is revised to read as set forth below.

**Authority:** Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

### Subpart C—Elimination of Lead-Based Paint Hazards in HUD-Associated Housing

2. Section 35.24 is revised to read as follows:

**§ 35.24 Requirements.**

(a) Each Assistant Secretary shall establish procedures with respect to programs involving HUD-associated housing within his or her administrative jurisdiction to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to housing that may present such hazards.

(b) Subject to the provisions of separate regulations promulgated with respect to any program by the Assistant Secretary having jurisdiction over that program, the following minimum requirements shall apply to all programs:

(1) All applicable surfaces of HUD-associated housing constructed prior to 1950 shall be inspected to determine whether defective paint surfaces exist. In housing proposed to be assisted with Community Development Block Grant, Rental Rehabilitation Grant or Housing Development Grant funds, the unit of local government or appropriate agency thereof shall be responsible for inspection.

(2)(i) Treatment necessary to eliminate immediate hazards shall, at a minimum, consist of the covering or removal of defective paint surfaces found in HUD-associated housing constructed prior to 1950.

(ii) Covering may be accomplished by such means as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Depending on the wall condition, wallpaper (which is permanently attached and not easily strippable) may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane torches are not permitted. Washing and repainting without thorough removal or covering does not constitute adquate treatment.

(3) Appropriate provisions for the inspection of applicable surfaces and elimination of hazards shall be included in contracts and subcontracts involving HUD-associated housing to which such requirements may apply.

(4) Any requirements of this section shall be deemed superseded by a regulation promulgaged by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated under the authorization granted in this section and supersedes, with respect to programs within its defined scope, the requirements prescribed by this section. See, *e.g.*, 24 CFR Part 200, Subpart O (Mortgage Insurance and Property Disposition); § 882.109(i) (Section 8 Existing Housing); Part 965, Subpart H (Public and Indian Housing).

2.A. Section 35.56(a)(1) is revised to read as follows:

**§ 35.56 Requirements.**

(a) * * *

(1) All applicable surfaces of residential structures constructed prior to 1950 shall be inspected to determine whether defective paint surfaces exist. For this purpose all defective paint surfaces shall be assumed to be immediate hazards; and

* * * * *

3. A new Subpart G is added to read as follows:

**Subpart G—Waivers**

**§ 35.70 Basic Authority.**

Upon determination of good cause, the Secretary of Housing and Urban Development, may, subject to statutory limitations, waive any provision of this Part 35 including any provisions established by Assistant Secretaries under the authority of Subpart C of Part 35.

**PART 200—INTRODUCTION**

4. The authority citation for 24 CFR Part 200 is revised to read as set forth below and any citation following any section in Part 200 is removed:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701–1715z–18); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart G is issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981, (42 U.S.C. 1436a). Subpart O is issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

5. Part 200 is amended by adding Subpart O—Lead-Based Paint Poisoning Prevention, to read as follows:

**Subpart O—Lead-Based Paint Poisoning Prevention**

Sec.

200.800 Purpose and applicability.
200.805 Definitions.
200.810 Single family insurance and coinsurance.
200.815 HUD-owned single family property disposition.
200.820 Multifamily insurance and coinsurance.
200.825 HUD-owned multifamily property disposition.
200.830 Compliance with other Federal, State and local laws.

**Subpart O—Lead-Based Paint Poisoning Prevention**

**§ 200.800 Purpose and applicability.**

The purpose of this subpart is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4186, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to existing housing within the coverage hereinafter described. This subpart is promulgated under the authorization granted in 24 CFR 35.24(b)(4), and it supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. Any housing assisted under the programs set out in this Part 200 for which no new activity is applied for or required is not covered by this Subpart nor by Subpart C of Part 35. The requirements of Subpart A of 24 CFR Part 35 apply to all housing constructed prior to 1978 and covered by this subpart.

**§ 200.805 Definitions.**

*Applicable surface.* All exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window, or doors, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

*Chewable surface.* All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

*Defective paint surface.* Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/d1 (micrograms of lead per deciliter of whole blood) or greater.

*HUD-owned properties.* Properties with residential units to which HUD acquired title, or any Federally-owned properties for which HUD has disposition responsibility and which are intended for residential habitation.

*Lead-based paint surface.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm $^2$.

*Sale of HUD-owned properties.* Any sale of federally-owned properties by HUD.

*Use for residential habitation.* The use of a property as a residential structure as defined in 24 CFR 35.3.

**§ 200.810 Single family insurance and coinsurance.**

(a) *General.* The requirements of this section apply to any one- to four-family dwelling which is the subject of an application for mortgage insurance under section 203(b) or other sections of the National Housing Act relating to the insurance or coinsurance of mortgages on one- to four-family dwellings. (Such other sections include sections 244 (coinsurance), 213 (cooperative housing insurance), 220 (rehabilitation and neighborhood conservation housing insurance), 221 (housing for moderate income and displaced families), 222 (mortgagor insurance for servicemen), 809 (armed services housing for civilian employees), 810 (armed services housing in impacted areas), 234 (mortgage insurance for condominiums), 235 (mortgage assistance payments for home ownership and project rehabilitation), 237 (special mortgage insurance for low and moderate income families), and 240 (mortgage insurance on loans for purchase of fee simple title from lessors).) Applications for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by the Commissioner are excluded from the coverage of this section.

(b) *Appraisal.* The fee panel appraiser or direct endorsement appraiser of a dwelling constructed prior to 1973 shall inspect the dwelling for defective paint surfaces. If a defective paint surface is found, the commitment or other approval document will contain the requirement that the surface is to be treated as described in paragraph (c) of this section. Under no circumstances, when such a defective paint surface has been listed to be treated, is any escrow procedure regarding that condition permitted. Treatment of the surface shall be accomplished before the mortgage is endorsed for insurance.

(c) *Abatement.* For defective paint surfaces, treatment shall be provided to defective areas. Treatment of hazards shall consist of covering or removing defective paint surfaces as described in 24 CFR 35.24(b)(2)(ii).

**§ 200.815 HUD-owned single family property disposition.**

(a) *General.* The requirements of this section apply to the sale of HUD-owned one- to four-family dwellings when their use is intended for residential habitation.

(b) *Defective paint surfaces.* For residential structures (1) constructed prior to 1973, or (2) constructed between 1973 and 1978 without HUD insurance or other assistance, HUD shall cause the property to be inspected for defective paint surfaces before offering the property for sale. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall

be completed before offering the property for sale. In the case of a sale to a non-owner occupant purchaser, treatment may be made a condition of sale, with sufficient sale funds escrowed to assure treatment.

(c) *Chewable surfaces.* This subsection applies only to dwellings constructed prior to 1950. If the purchaser is an owner-occupant and the occupant family contains one or more children under the age of seven years, closing of the sale shall be deferred until completion of the following procedures. Where a blood lead level screening program is determined by HUD to be reasonably available, screening of each occupant child under the age of seven years will be required. If an EBL condition is identified, HUD will cause the dwelling to be tested for lead-based paint on chewable surfaces or follow treatment procedures. Testing shall be conducted by a State or local health or housing agency or by an inspector certified by a State or local health or housing agency or by a qualified HUD inspector. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii).

(d) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section in the case of a residential structure constructed prior to 1950, HUD, at its option, or the purchaser may forgo testing and abatement, and abate all interior and exterior surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

**§ 200.820 Multifamily insurance and coinsurance.**

(a) *General.* The requirements of this section apply to any existing property which is the subject of an application for mortgage insurance under sections 207 (including applications under section 207 pursuant to section 223(f)), 213, 220, 221 or 234 of the National Housing Act, including applications for mortgage insurance under any of these sections pursuant to section 223(a)(7) of the National Housing Act. This section also applies to the application for coinsurance under section 207 pursuant to sections 223(f) or 244, as well as under section 221(d) pursuant to section 244 in connection with substantial rehabilitation of an existing property. This section does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age) or projects subject to an application for insurance under section 231, 232, 241 or 242 of the National Housing Act. The requirements of this section do not apply to 0-bedroom units. The requirements of paragraph (c) of this section apply to projects that have not received a conditional commitment for insurance on or before March 16, 1987.

(b) *Defective paint surfaces.* In the case of a residential structure constructed prior to 1973, the HUD or coinsurer's architect and the sponsor's architect shall inspect the property for defective paint surfaces before the issuance of a commitment. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before final endorsement as a condition of the firm commitment.

(c) *Chewable surfaces*—(1)(i) *Random sample.* In the case of a residential structure constructed prior to 1950, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces. Ten units shall be tested in projects with 20 or more units, and six units shall be tested in projects with fewer than 20 units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as child care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any unit in the sample, all units in the project are required to be tested. If lead-based paint is found in any common area, all common areas in the project are required to be tested. If lead-based paint is found in any exterior applicable surface, all exterior applicable surfaces in the project are required to be tested.

(ii) *EBL Child.* In the case of a residential structure constructed prior to 1973, if the developer is presented with test results that indicate a child seven years of age or younger living in a unit has an EBL the developer must test the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test, and abate all the unit surfaces.

(2) *Testing requirements.* Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Testing of chewable surfaces shall be performed by a State or local health or housing agency or by an inspector certified or regulated by the State or local health or housing agency. The testing entity shall certify to the results of the test. The mortgagor shall be responsible for obtaining these testing services.

(3) *Treatment.* Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). After joint inspection and during the write-up stage, completion of abatement of defective paint surfaces and lead-based paint on chewable surfaces will be a special condition requirement in the commitment. The developer will be required to abate all defective paint surfaces and lead-based paint on chewable surfaces. HUD or the coinsuring lender will reinspect all units after repair and before final endorsements.

(4) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (c) (1)(i), (2) and (3) of this section, in the case of a residential structure constructed prior to 1950, the developer may forego testing and abatement, and abate all interior and exterior surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) before final endorsement. HUD or the coinsuring lender will reinspect all units after repair and before final endorsement.

(d) *Tenant protection.* Owners shall take appropriate action as prescribed by the Commissioner to protect tenants from hazards associated with abatement procedures.

(e) *Monitoring and enforcement.* (1) For multifamily insurance programs, compliance with any rehabilitation requirement will utilize the standard construction compliance regulations (*e.g.*, 24 CFR 207.19(c)(6)) for the assurance of completion requirements for section 207 and the incomplete repair escrow requirement of section 223(f) for each program.

(2) For coinsurance, owner compliance with the requirements of this section shall be monitored by the approved coinsurance lender. Compliance with any requirements of this section shall also be enforced by the Assurance of Completion Agreement as

provided under 24 CFR 251.402(d) or by escrow under 24 CFR 255.401(c).

**§ 200.825 HUD-owned multifamily property disposition.**

(a) *General.* The requirements of this section apply to the sale of any HUD-owned multifamily property when its use is intended for residential habitation. This section does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age). The requirements of this section do not apply to 0-bedroom units.

(b) *Defective paint surfaces.* For residential structures: (1) Constructed prior to 1973, or (2) constructed between 1973 and 1978 without HUD insurance or other assistance, HUD shall cause the property to be inspected for defective paint surfaces before offering the property for sale. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before delivery of the property to the purchaser or, if the disposition program under 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in the required repairs. Residential structures assisted under section 223(f) of the National Housing Act are to be inspected and treated as set forth in paragraph (b)(1) of this section.

(c) *Chewable surfaces.* If the residential structure was constructed or substantially rehabilitated prior to 1950 (and not substantially rehabilitated under HUD supervision after 1973), HUD shall cause a random sampling of dwelling units to be tested for lead-based paint on chewable surfaces as part of the sales contracting procedure. Random testing shall be performed as described in § 200.820(c)(1). Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 $mg/cm^2$ or higher using an XRF shall be considered positive for presence of lead-based paint. Testing of chewable surfaces shall be performed by a State or local health or housing agency or by an inspector certified or regulated by the State or local health or housing agency. The testing entity shall certify to the results of the test. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). Treatment shall be completed before delivery of the property to the purchaser or, if the disposition program under 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in the required repairs.

(1) *EBL Child.* In the case of a residential structure constructed prior to 1978, if HUD is presented with test results that indicate a child seven years of age or younger living in a unit has an elevated blood level or EBL, HUD must test or cause to be tested the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test and abate all the unit surfaces.

(2) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section, in the case of a residential structure constructed prior to 1950, HUD, at its option, or the purchaser may forego testing and abatement, and abate all interior and exterior surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(d) *Tenant protection.* HUD or the purchaser, as appropriate, shall take appropriate action as prescribed by the Commissioner to protect tenants from hazards associated with abatement procedures.

**§ 200.830 Compliance with other Federal, State and local laws.**

(a) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in a manner that will promote efficiency while ensuring a comparable level of protection.

(b) *Participant responsibility.* Nothing in this subpart is intended to relieve any participant in the programs covered by this subpart of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(c) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See, *e.g.*, 40 CFR Parts 260–271.)

## PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

6. The citation of authority for Part 881 continues to read as follows:

**Authority:** Secs. 3, 4 and 8, United States Housing Act of 1937, (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

7. Section 881.207(e) is revised to read as follows:

**§ 881.207 Property standards.**

* * * * *

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), 24 CFR Part 35 and 24 CFR Part 200, Subpart 0; and

* * * * *

## PART 882—SECTION 8 HOUSING ASSISTANCE PROGRAM—EXISTING HOUSING

8. The citation of authority for Part 882 continues to read as follows:

**Authority:** Secs. 3, 4, and 8, United States Housing Act of 1937, (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

9. Section 882.109(i) is revised to read as follows:

**§ 882.109 Housing quality standards.**

* * * * *

(i) *Lead-based paint*—(1) *Purpose and applicablity.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to existing housing units for which Requests For Lease Approval are made under this Part. This paragraph is promulgated under the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR Part 35. The requirements of paragraph (i)(4) of this section are applicable to units for which initial inspection under § 882.209(h)(1) is made on or after [60 days after effective date of rule]. The requirements of this paragraph do not apply to 0-bedroom units. The requirements of Subpart A of 24 CFR Part 35 apply to all units constructed prior to 1978 covered by a Housing Assistance Payments Contract under this subpart.

(2) *Definitions.*

*Applicable surface.* All exterior surfaces of a residential structure, up to five feet from the floor or ground, such

as a wall, stairs, deck, porch, railing, window, or doors, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

*Chewable surface.* All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

*Defective paint surface.* Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

*Lead-based paint.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 $mg/cm^2$.

(3) *Defective paint.* In the case of a unit, for a Family which includes a child under the age of seven years, which was constructed prior to 1973, the initial inspection under § 882.209(h)(1), and each periodic inspection under § 882.211(b), shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211(b)–(c), as appropriate. Correction of defective paint conditions discovered at periodic inspection shall be completed within 30 days of PHA notification to the Owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces.* If a Request for Lease Approval is submitted, with respect to a unit constructed prior to 1973, by a Family which includes a child under the age of seven years with an identified EBL condition, the PHA shall cause the unit to be tested for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency or by an inspector certified by a State or local health or housing agency. Lead content shall be tested by using an X-ray flourescence analyzer (XRF) or other method approved by HUD. Test readings of 1 $mg/cm^2$ or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h).

(5) *Abatement without testing.* In lieu of the procedures set forth in (4) above, the PHA may at its discretion, forego testing and require the owner to abate all interior and exterior chewable surfaces in accordance with the method set out at 25 CFR 35.24(b)(2)(ii).

(6) *Tenant protection.* the owner shall take appropriate action to protect tenants from hazards associated with abatement procedures.

(7) *Records.* The PHA shall keep a copy of each inspection report for at least three years. If a unit requires testing or if the unit requires treatment of chewable surfaces based on the testing, the PHA shall indefinitely the test results and, if applicable, the owner certification of treatment. The records shall indicate which chewable surfaces in units have been tested and which chewable surfaces in the units have been treated. If records establish that certain chewable surfaces were tested or tested and treated in accordance with the standards prescribed in this section, such chewable surfaces do not have to be tested or treated at any subsequent time.

* * * * *

10. Section 882.209 is amended by revising (b)(4)(iii) and by adding new paragraph (c)(9), to read as follows:

**§ 882.209 Selection and participation.**

* * * * *

(b) * * *

(4) * * *

(iii) Information regarding lead-based paint poisoning hazards, symptoms and prevention, the availability of blood lead level screening and HUD's requirements for inspecting, testing and, in certain circumstances, abating lead-based paint.

* * * * *

(c) * * *

(9) The advisability and availability of blood lead level screening for children under seven years of age.

* * * * *

11. Section 882.404(c) is added to read as follows:

**§882.404 Housing quality standards.**

* * * * *

(c) *Lead-based paint*—(1) *Purpose and applicability.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to existing housing units for which proposals are made for assistance under the Section 8 Moderate Rehabilitation Program. This paragraph is promulgated under the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. The requirements of paragraph (c)(4) of this section are applicable to proposals for which initial inspection under § 882.504(a) is made on or after [March 16, 1987]. The requirements of this paragraph do not apply to 0-bedroom units. The requirements of Subpart A of 24 CFR Part 35 apply to all units constructed prior to 1978 covered by a Housing Assistance Payments Contract under this subpart. This section does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age).

(2) *Definitions.*

*Applicable surface.* All exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window, or doors, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

*Chewable surface.* All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames and other protruding woodwork.

*Defective paint suface.* Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

*Lead-based paint.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 $mg/cm^2$.

(3) *Defective paint.* In the case of a unit, for a Family which includes a child under the age of seven years, which was constructed prior to 1973, the initial inspection under § 882.504(a), and each periodic inspection under § 882.516(b), shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be included in the specific work items referred to in § 882.504(a) or required as corrective action pursuant to § 882.516(c), as appropriate. Correction of defective paint conditions discovered at periodic inspection shall be

completed within 30 days of PHA notification to the Owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces.* If a proposal is submitted, with respect to a unit constructed prior to 1973, occupied by a Family which includes a child under the age of seven years with an identified EBL condition, the PHA shall cause the unit to be tested for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency or by an inspector certified by a State or local health or housing agency. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 $mg/cm^2$ or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be included in the specific work items referred to in § 882.504(a).

(5) *Abatement without testing.* In lieu of the procedures set forth in Paragraph (c) of this section (4) above the PHA may, at its discretion, forgo testing and require the abatement of all interior and exterior chewable surfaces in accordance with 24 CFR 35.24(b)(2)(ii).

(6) *Tenant protection.* The owner shall take appropriate action to protect tenants from hazards associated with abatement procedures.

(7) *Records.* The PHA shall keep a copy of each inspection report for at least three years. If a unit requires testing or if the unit requires treatment of chewable surfaces based on the testing, the PHA shall keep indefinitely the test results and, if applicable, the owner certification of treatment. The records shall indicate which chewable surfaces in units have been tested and which chewable surfaces in the units have been treated. If records establish that certain chewable surfaces were tested or tested and treated in accordance with the standards prescribed in this section, such chewable surfaces do not have to be tested or treated at any subsequent time.

12. Section 882.507(b)(2)(iv) is revised to read as follows:

**§ 882.507 Completion of rehabilitation.**

* * * * *

(b) * * *

(2) * * *

(iv) *Any unit(s) built prior to 1973 are in compliance with § 882.404(c)(3) and § 882.404(c)(4).*

13. Section 882.514 is amended by adding new paragraph (d)(1)(vi) to read as follows:

**§ 882.514 Family participation.**

* * * * *

(d) * * *

(1) * * *

(vi) The advisability and availability of blood lead level screening for children under seven years of age and HUD's requirements for inspecting, testing and, in certain circumstances, abating lead-based paint.

* * * * *

## PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

14. The citation of authority for Part 886 continues to read as follows:

**Authority:** Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

### Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

15. Section 886.113(i) is revised to read as follows:

**§ 886.113 Housing quality standards.**

* * * * *

(i) *Lead-based paint—(1) Purpose and applicability.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to existing housing units for which application for assistance is made under this Subpart. This paragraph is promulgated under the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. The requirements of this paragraph do not apply to 0-bedroom units. The requirements of paragraph (i)(4) of this section are applicable to units for which applications are approved on or after March 16, 1987. The requirements of Subpart A of 24 CFR Part 35 apply to all units constructed prior to 1978 covered by a Housing Assistance Payments Contract under this subpart. This section does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age).

(2) *Definitions.*

*Applicable surface.* All exterior surfaces of a residential structure, up to five feet from the floor or ground, which are readily accessible to children under seven years of age, such as a wall, stairs, deck, porch, railing, window, or doors, and all interior surfaces of a residential structure.

*Chewable surface.* All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

*Defective paint surface.* Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

*Lead-based paint.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 $mg/cm^2$.

(3) *Defective paint.* Residential units which were constructed prior to 1973 shall be inspected for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR § 35.24(b)(2)(ii) shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(4)(i) *Chewable surfaces.* In the case of a residential structure constructed prior to 1950, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces. Ten units shall be tested in projects with 20 or more units, and six units shall be tested in projects with fewer than 20 units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as day care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paints, and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all assisted units in the project are required to be tested. If lead-based paint is found in any common areas, all common areas in the project are required to be tested. If lead-based paint is found in any exterior applicable surface, all exterior applicable surfaces in the project are required to be tested. Testing shall be

performed using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 $mg/cm^2$ or higher using an XRF shall be considered positive for presence of lead-based paint. Testing of chewable surfaces shall be performed by a State or local health or housing agency or by an inspector certified or regulated by the State or local health or housing agency. The testing entity shall certify to the results of the test. The Owner shall be responsible for obtaining these testing services. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(ii) *EBL Child.* In the case of a residential structure constructed prior to 1973, if the owner is presented with test results that indicate a child seven years of age or younger living in a unit has an elevated blood level or EBL, the owner must test the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test and abate all the unit surfaces.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (i)(3) and (4) of this section, in the case of a residential structure constructed prior to 1950, the owner may forgo testing and abatement, and abate all interior and exterior surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(5) *Tenant protection.* The Owner shall take appropriate action to protect tenants from hazards associated with abatement procedures.

## Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

16. Section 886.307(i)(1)(i) is revised to read as follows:

**§ 886.307 Housing quality standards.**

* * * * *

(i) *Lead-based paint* (1) *Performance requirements.* (i) The dwelling unit shall comply with HUD lead-based paint regulations, 24 CFR Parts 35 and 200, Subpart O, issued under the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and the owner shall certify that the dwelling is in accordance with such HUD regulations.

* * * * *

17. Section 886.333(b)(2)(iv) is revised to read as follows:

**§ 886.333 Completion of rehabilitation.**

* * * * *

(b) * * *

(2) * * *

(iv) The project was treated and is in compliance with applicable HUD lead-based paint regulations (24 CFR Parts 35 and 200, Subpart O).

* * * * *

Dated: January 13, 1987.

**Samuel R. Pierce, Jr.,**

*Secretary.*

[FR Doc. 87–998 Filed 1–14–87; 8:45 am]

BILLING CODE 4210–32–M

# Reader Aids

Federal Register

Vol. 52, No. 10

Thursday, January 15, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

| | |
|---|---|
| **Laws** | 523-5230 |

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

| | |
|---|---|
| **United States Government Manual** | 523-5230 |

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, JANUARY

1-228.....2
229-388.....5
389-516.....6
517-660.....7
661-754.....8
755-1178.....9
1179-1312.....12
1313-1430.....13
1431-1618.....14
1619-1896.....15

## CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5595.....229
5596.....755
5597.....1431

**Executive Orders:**
12462 (Amended by EO 12579).....515
12496 (Superseded by EO 12578).....505
12578.....505
12579.....515

**Administrative Orders:**
Memorandums:
Oct. 6, 1986 (See Memorandum of Dec. 30, 1986).....1619
Dec. 30, 1986....231, 233, 1619
Jan. 2, 1987.....389

**5 CFR**

Ch. XIV.....1313
534.....1
831.....1621
890.....2

**7 CFR**

2.....235
17.....1623
272.....1298
273.....1298
300.....1179
301.....1180
907.....240, 757
910.....241, 757
911.....758, 1313
1036.....241
1065.....1314
1421.....1315, 1433
1438.....1433
1476.....1433
1480.....1433
1772.....1181
1786.....1434
1944.....243
1951.....243

**Proposed Rules:**
301.....291, 1276
318.....292
319.....685
658.....1465
925.....432
944.....432
1240.....797
1809.....1706
1900.....1706
1902.....1706
1910.....1706
1924.....1706
1930.....296
1941.....1706
1943.....1706
1945.....1706
1951.....1706
1955.....1706
1962.....1706
1965.....1706
1980.....1706

**8 CFR**

103.....3, 661

**Proposed Rules:**
252.....1634

**9 CFR**

50.....1316
77.....1316
78.....1623
151.....1317
307.....3
318.....5
350.....3
351.....3
354.....3
355.....3
362.....3
381.....3

**Proposed Rules:**
78.....1336

**10 CFR**

9.....759
30.....1292
40.....1292
50.....1292, 1336
61.....397, 1292
70.....1292
72.....1292
503.....658

**Proposed Rules:**
2.....1415
50.....543, 1200
62.....1634

**11 CFR**

100.....760
102.....760
103.....760
104.....760
110.....760

**12 CFR**

341.....1182
620.....1440
621.....1440

**Proposed Rules:**
225.....543
563.....80

**13 CFR**

121.....397

**14 CFR**

21.....656, 1806

23.....656, 1806
36.....1806
39.....517–523, 1318, 1319, 1440–1443
71.....524, 525, 775, 1418, 1426, 1625
91.....1806
97.....661
135.....1806

**Proposed Rules:**
1.....1635
27.....1635
29.....1635
39.....435, 551–557, 1338, 1468
71.....81, 297, 558–560

**15 CFR**
22.....6
372.....663
376.....776
386.....663
399.....405, 665

**16 CFR**
13.....253, 254, 656
1034.....405
1750.....405

**17 CFR**
1.....777
5.....1444
33.....777

**18 CFR**
2.....9
37.....11
388.....779

**Proposed Rules:**
Ch. XIII.....1469
11.....62

**19 CFR**
4.....254
24.....255

**Proposed Rules:**
101.....1470

**20 CFR**
364.....526

**21 CFR**
74.....902
81.....902
82.....902
176.....527
178.....406
520.....666
558.....530, 780, 1626
561.....1446

**Proposed Rules:**
874.....656
878.....656
886.....656

**22 CFR**
43.....1447

**23 CFR**

**Proposed Rules:**
Ch. I.....1200
658.....298

**24 CFR**
35.....1876
200.....1876
881.....1876
882.....1876
886.....1876

**Proposed Rules:**
200.....1320
203.....1320
220.....1320
228.....1320
232.....1201
241.....1201
242.....1201
905.....1415

**25 CFR**
256.....38
272.....38

**26 CFR**
1.....39, 40, 409, 1416, 1691
602.....40, 1416, 1691

**Proposed Rules:**
1.....83, 438, 802, 1416
7.....802
20.....802
25.....802
53.....802
56.....802
602.....1416

**27 CFR**
19.....530, 667
25.....530, 667
240.....530, 667
250.....530, 667
251.....530
270.....530, 667
275.....530, 667
285.....530, 667

**Proposed Rules:**
270.....1207
275.....1207
285.....1207
290.....1207
295.....1207

**28 CFR**
51.....486

**29 CFR**
1601.....42
2644.....256
2676.....1626

**Proposed Rules:**
1910.....1212
2520.....84

**30 CFR**
925.....534

**Proposed Rules:**
202.....1846, 1858
203.....1846, 1858
206.....1846, 1858
207.....1858
210.....1858
212.....1840
218.....687, 1471, 1840
241.....1858
914.....1339
935.....561

**31 CFR**
5.....43–51
18.....1451
51.....414

**Proposed Rules:**
18.....1473

**32 CFR**

**Proposed Rules:**
60a.....1340
230.....90
286.....802
856.....803

**33 CFR**
117.....670
161.....1691
165.....670
328.....1182
330.....1182

**Proposed Rules:**
110.....90
117.....1636
161.....806

**36 CFR**
702.....671
1232.....948

**38 CFR**

**Proposed Rules:**
13.....300

**39 CFR**
10.....673

**Proposed Rules:**
960.....301

**40 CFR**
52.....53, 54, 1183, 1454–1456, 1627, 1628
80.....257
81.....54
180.....1457
403.....1586
799.....1330

**Proposed Rules:**
52.....91
62.....1474
65.....562
85.....924
180.....563
228.....438
704.....107, 1583
721.....107, 1583

**41 CFR**
101–40.....387
201–24.....656

**42 CFR**
60.....730

**Proposed Rules:**
110.....1343

**43 CFR**
3400.....415
3470.....415

**Proposed Rules:**
426.....304
3480.....1840

**Public Land Orders:**
6636.....1185

**44 CFR**

**Proposed Rules:**
6.....304
61.....112
67.....690

**45 CFR**
30.....260
201.....273
304.....273
801.....416

**Proposed Rules:**
1180.....691

**46 CFR**
160.....1185
515.....1629

**Proposed Rules:**
580.....809

**47 CFR**
1.....273, 1630
2.....417, 1331, 1458
15.....417, 1458
22.....417, 1458
25.....417, 1458
43.....1629
65.....273
73.....57, 58, 275–277, 1630
76.....1630
90.....417, 1332
97.....277, 278

**Proposed Rules:**
31.....1344
32.....1344
73.....113–115, 305, 1345–1349
81.....1349

**48 CFR**
208.....781
525.....58, 278
552.....278, 1333
810.....280, 1276
836.....280, 1276
852.....280, 1276
970.....1602

**Proposed Rules:**
52.....226
215.....809

**49 CFR**
193.....674
544.....59
1312.....536

**Proposed Rules:**
571.....1474
1312.....564

**50 CFR**
17.....283, 675, 679, 781, 1459
23.....1333
228.....1197
611.....417, 422, 785
642.....288
650.....1462
655.....537
663.....682, 790
671.....1632
672.....422, 785
675.....422, 785

**Proposed Rules:**
17.....306, 1494, 1497
20.....1636
23.....309
611.....198
672.....198
675.....198
681.....442

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

# Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected),* the *Federal Register Index,* or both.

**LSA • List of CFR Sections Affected**

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.

$24.00 per year

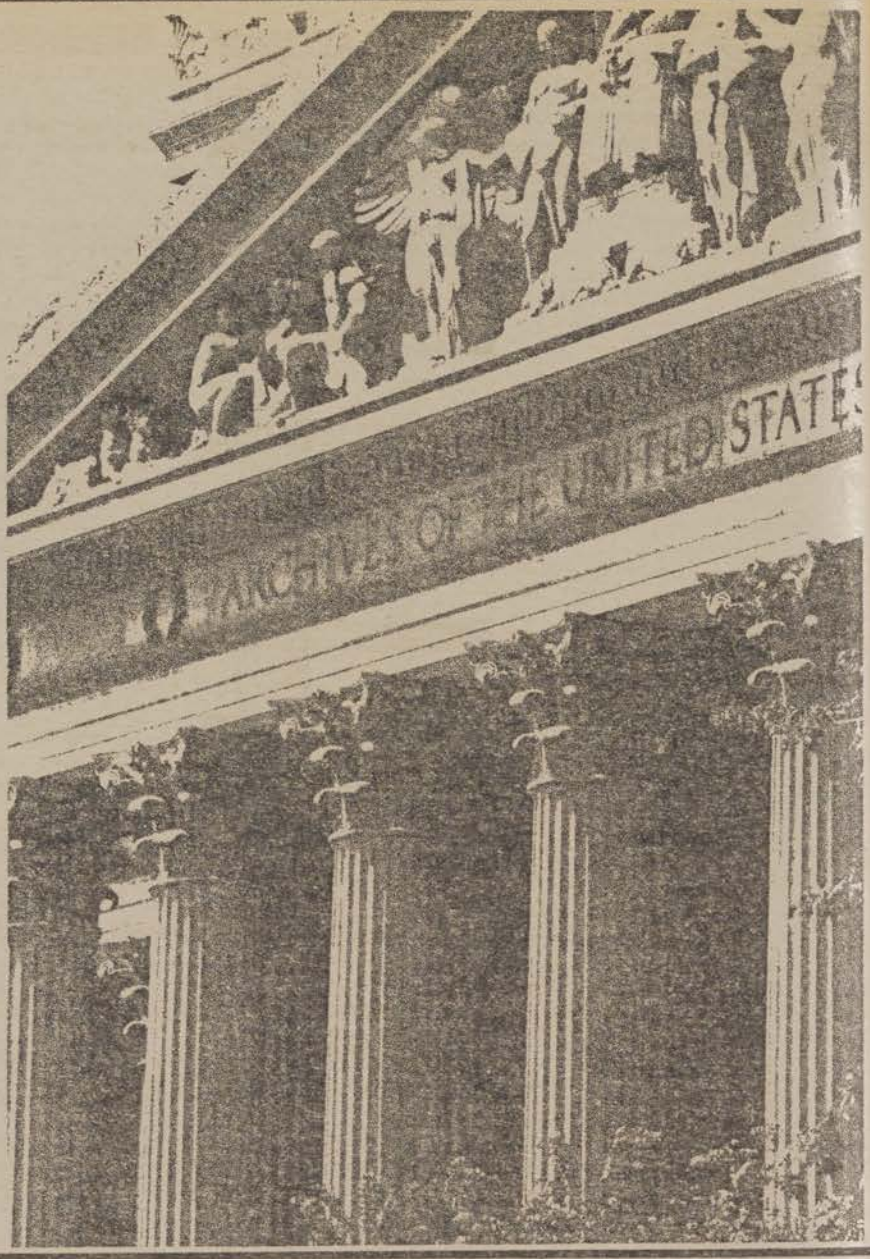
**Federal Register Index**

The Index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

$22.00 per year

*A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.*

*Note to FR Subscribers: FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.*



## Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

**Credit Card Orders Only**

Total charges $_____

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone Nos.

Area Code Home | Area Code Office

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please enter the subscription(s) I have indicated:

___ **LSA** List of CFR Sections Affected $24.00 a year domestic; $30.00 foreign

___ **Federal Register Index** $22.00 a year domestic; $27.50 foreign

**PLEASE PRINT OR TYPE**

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

(Rev. 10-1-85)